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under Sec. 40 of the Code of Civil Procedure, is neither a petition nor an application, liable to duty within the meaning of the Stamp Act, and the question whether the exemption applies to it does not arise. If the description were to be regarded as an application for a summons to the defendant, under Sec. 43, to produce the document, then it would necessarily be the first application within the meaning of the exemption.

July 21.

Miscellaneous Regular Appeal No. 2 of 1868.

MAKUNDA' valad BA'LA CHA'RYA .....*Appellant.*
SITA'RA'M and NILO.....*Respondents.*

Limitation—Old Decrees—Act XIV. of 1859, Secs. 20 and 21.

Sec. 21 of Act XIV. of 1859 is to be read as an independent section, and distinct from Sec. 20 of that Act.

Bái Udekúvar v. *Múlji Náran* (3 Bom. H. C. Rep., A.C.J. 177) followed.

Where the holder of a decree which was in force when Act XIV. of 1859 came into operation applied for execution on the 5th of December 1864, but allowed that application to drop, and again applied for execution on the 28th of March 1866 *it was held* that he was, barred by the law of limitation.

THIS was a Miscellaneous Appeal from an order made by R. H. Pinhey, District Judge at Thána, under date the 22nd of November 1867, in the matter of the execution of a decree.

The appellant, having obtained an arbitration award in his favour on the 9th of February 1857, which was then filed in court under Reg. VII. of 1827, presented, on the 5th of December 1864, an application for its execution as a decree of court under cl. 1, Sec. IX. of the said Regulation; but, as he did not appear to prosecute it, no proceeding was taken on the application, and it was dismissed on the 18th of January 1866. Subsequently the applicant made another application for execution on the 28th of March 1866, but the Judge rejected it, making the following order :—

"I reject this application under Sec. 21 of Act XIV. of 1859. The decree, which the plaintiff seeks to execute,

was passed on the 9th of February 1857. (It is not actually a decree, but an award by arbitrators under the old law of 1827.) It was, therefore, a decree or order in force at the time of the passing of Act XIV. of 1859. Therefore, by the provision of Sec. 21 of that Act, the provisions of Sec. 20 of the Act do not apply to the plaintiff's decree. In this case, I follow the ruling of the Bombay High Court in the case of *Bái U'dekúvar* v. *Múlji Náran*, dated 12th December 1866. The plaintiff's pleader has brought to my notice a Calcutta High Court ruling (per Kemp and Jackson, JJ.), on the 1st of February 1866, in the case of *Gasper Gregory* (decree-holder), appellant, v. *Juyput Chunder Bamjee*, judgment debtor (respondent): Calc. W. Rep., Vol. V., Misc. App., p. 17; but no reasons are given by the learned Judges in the Calcutta Court for the words used in their judgment, that "on the next and subsequent applications the Court would have to be guided by the rule in Sec. 20," and I confess that I do not see how to reconcile these words with the very plain language of Sec. 21."

From this order an appeal was preferred to the High Court.

The case was heard this day, before COUCH, C. J., and NEWTON, J.

Shántárám Náráyan, for the appellant:—The Judge has followed the decision of this Court in the case of *Bái U'dekúvar* (*a*); but certain decisions of the Calcutta High Court do not appear to have been adverted to when that decision was come to, particularly the case of *Mohabeer Persad* v. *Mussamut Pranputtee Koer* (*b*) by a Full Bench. There Sir Barnes Peacock has put an interpretation upon Secs. 20 and 21 of Act XIV. of 1859 which is warranted by the language of the Legislature, and does not lead to any unreasonable results. As ruled in that case, the proper construction of the two sections (20 and 21 of the Limitation Act, XIV. of 1859) taken together is that

(*a*) 3 Bom. H. C. Rep., A.C.J. 177.

(*b*) 7 Calc. W. Rep., Civ. R. 515, decided 15th March 1867, subsequently to the case of *Bái U'dekúvar* v. *Múlji Náran*.

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the words coming after the word 'but' in Sec. 21 are to be read as a proviso to Sec. 20. By this construction all difficulties are got rid of. The two sections thus read together will be to the effect that no process of execution shall issue upon any judgment more than three years old, unless some proceeding shall have been taken to enforce or keep it in force within three years next preceding the application for execution; provided that process of execution in respect of a decree obtained before the passing of Act XIV. of 1859 may be issued, either within the time limited by law, or within three years next after the passing of the Act, whichever shall first expire, even though no proceeding shall have been taken to enforce it or to keep it in force within three years next preceding the application for execution. Sir Barnes Peacock, whose opinion on this subject, as he was a member of the Legislative Council when the Act was passed, is entitled to great weight, observes: "Reading the two sections together, it appears to us that the above construction is a reasonable one, from which no injury can arise to any one, and which will carry out the real intentions of the Legislature." [COUCH, C. J.:—Then no effect is given to the first clause in Sec. 21, but it is to be entirely omitted from the section. We cannot leave out a clause inserted by the Legislature, but must give it some effect.] It will have effect. Sec. 20 contains a restriction that no process of execution shall issue, unless some proceeding shall have been taken within three years previously, and the first clause in Sec. 21 evidently refers to this restriction and says that in respect of decrees *in force* at the passing of Act XIV. of 1859 nothing of the preceding section, 20, *i. e.*, nothing of the restrictions in that section, shall apply. [NEWTON, J.:—If the first part of Sec. 21 simply means what you say, then what would be the use and meaning of the second part, commencing with "but;" it would mean the same thing. We must give the first part some meaning that is not borne by the second.] The Court is bound to construe the whole of the language of the Legislature, and to put an interpretation upon it which is reasonable. The Court cannot overlook the consequences which are likely to ensue from

so strict a construction as that put upon the section in *Bái U'dekúvar's* case. There must be numerous old decrees to which Sec. 21 so construed could not apply at all, or, if applied, would be productive of the most serious harm. Decrees payable by periodical instalments, for instance, or for the entire fulfilment of which a period has been prescribed which goes beyond the period of three years limited in Sec. 21, it would be impossible to execute. [COUCH, C.J. :—Such decrees can hardly be considered to be *in force* at the time of the passing of the Act in respect of instalments which had not become due at that time.] Then there is another more serious inconvenience. Under the old Regulations, as well as under the Civil Procedure Code, a practice has existed almost uniformly throughout the Western Presidency to receive an application for execution; to take some steps upon it, and, whether any satisfaction has been obtained upon it or not, to put it by "as disposed of" (*nikál*), as soon as the period of the warrant issued upon it has expired. If the judgment-creditor should desire further execution, he must present a fresh application, when a fresh warrant will issue. This practice has existed in almost all the courts from the earliest time, and there must be a large number of applications for execution which have been laid by as "disposed of," in pursuance of this system, within the three years after the passing of the Act; thus, by the act of the Court, if the interpretation contended for is to prevail, all these decree-holders, who have been diligent enough to make applications for execution within the time, have to suffer. [COUCH, C.J. :—The point does not arise in this case, as the first application for execution was made after the lapse of three years from the passing of the Act, and we are not called upon to decide it; but Sec. 21 appears to require only that process of execution should be issued: and if this is done, I think the decree-holder satisfies the law, and I do not see anything in the law that prevents the same warrant from remaining in force, the period being enlarged from time to time, or the issuing of a second and a third warrant upon one application for execution until it is fully satisfied.]

Nánábhái Haridás for the respondent.

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COUCH, C. J.:—The award or the decree sought to be executed, having been made on the 9th of February 1857, was in force at the time of the passing of the Limitation Act. The first application for execution was made on the 5th of December 1864, which was more than three years after the passing of the Act, and was, therefore, of no avail (*c*). A second application was made on the 28th of March 1866, and it was rejected as barred by the law of limitation. The contention is that the provisions of Sec. 20, as well as those of Sec. 21, applied to the case; but in the case of *Bái Udekúvar* we have ruled that Sec. 20 does not apply to such cases. With reference to this, we are referred to a Full Bench decision of the Calcutta High Court, which rules that Sec. 21 is to be taken as a proviso of Sec. 20. Notwithstanding the great respect I have for the Chief Justice and other Judges of that court, I must say that I cannot concur in that decision. In the recent case of *Fuentes* v. *Montis* (*d*) two eminent Judges have expressed themselves in language which is very applicable here. Mr. Justice Willes says (p. 283):—"I am at all times anxious to give full effect to the intention of the Legislature as expressed in the language they have used. But I do not feel myself at liberty, from any notions of expediency which I may entertain, to go beyond that which I find written. I, therefore, feel compelled to deal with the Acts of Parliament in question according to the expressions I find there." Mr. Justice Montague Smith says (p. 285):—"I should have been glad to have given a construction to the Factors Acts wide enough to include this case, because I certainly think that that which has occurred here falls within the very mischief against which, in some instances at least, the Legislature meant to provide; but I am bound to construe the Acts according to the language which the Legislature have used, and I do not feel myself at liberty to insert words which are not found in those Acts." Nor do I feel myself at liberty to omit the words which I

(*c*) See 3 Bom. H. C. Rep., A. C. J. 175, which overrules the decision in 1 Bom. H. C. Rep. 94.

(*d*) Law Rep. 3 C. P. 268.

find in Sec. 21 of Act XIV. of 1859, namely, "nothing in the preceding section shall apply to any judgment, decree, or order in force at the time of the passing of this Act;" and, therefore, I must adhere to our former decision that Sec. 20 does not apply to old decrees. I, accordingly, reject the appeal.

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NEWTON, J.:—I fully concur.

Appeal rejected.

Special Appeal No. 418 *of* 1867. July 21.

MAKHAN NAI'KI'N, daughter of ALLARAKHI.....*Appellant.*

MA'NCHAND LADHA'BHA'I, deceased, his heir his brother NAHA'LCHAND, *et al.*...*Respondents.*

Appeal—Time for Appealing—Raking up old Claims.

An appeal will not be allowed, after the time for appealing has expired, merely because a judgment altering the view of the law which prevailed at the time of the decision of the original suit has subsequently been given by the High Court.

THIS was a Special Appeal from the decision of F. Lloyd, Judge of the District of Puṇá, in Appeal No. 359 of 1865, confirming the decree of the Munsif of Puṇá.

The original suit was instituted by Mánchand, on the 24th of August 1860, to recover possession of a house mortgaged to him, on the ground that he had, according to the terms of the mortgage bond, become a proprietor of the house, as the money was not repaid within the stipulated time.

The Munsif awarded the claim on the 19th of January 1861. Against this decision the defendant, Makhan, preferred an appeal *in formâ pauperis*, but the Judge, on the 10th of April 1861, refused to admit it on the file. Subsequently, on the 10th of August 1865, the defendant filed a duly stamped regular appeal. The Judge, F. Lloyd, however, confirmed the Munsif's decree, for the following reasons:—

"The present appeal was not filed till the 10th of August 1865. In the mean time, namely, on the 25th of September