

1866
 Narotamdas
 Bhagtandas
 v.
 Dayabhai
 Ichhachand.

till the term had expired. The Court of first instance raised no issue as to the existence of such a custom and gave no decision on the point. The District Judge has declared that in his opinion the plaintiff has failed to establish that there was any rule of the kind among English merchants, but he has come to this conclusion without noticing that the Court of Original Jurisdiction had omitted to raise the question or to take evidence with respect to it. Under these circumstances we must reverse the decrees of the District Judge and Munsif and remand the cause to the Court of first instance that the dates we have mentioned may be ascertained, and the existence of the custom inquired into, and that the issue respecting limitation may be determined with reference to the principles which we have laid down. If the decision on this issue be ultimately in favour of the plaintiff, the Court of first instance must then proceed to dispose of the remaining points in dispute between the parties, and pass a law decree on the merits, in which costs, including the costs of this Special Appeal, shall be apportioned.

Civil Petition.

Jan. 7. Panamchand valad Surajmal.....*Petitioner.*
 Bhivraj valad Dashrat.....*Opponent.*

Limitation—Decree payable by Instalments—Execution—Act XIV. of 1859. Sec. 20.

Where the decree of a Court is made payable by instalments, the time barring the execution of such decree under sec. 20 of the Limitation Act does not commence to run until the first instalment becomes payable. The petitioner obtained a decree, upon the 22nd of January 1863, against the opponent for payment of the amount thereof by instalments. The first instalment became payable on the 1st of February 1864.

On the 26th of January 1866, the petitioner applied for the execution of the decree, but the Munsif of Nevasa rejected the application, on the ground that it had not been presented within three years from the date of the decree sought to be executed.

* See post No. 45.

This order was confirmed on appeal by the Judge, A. St. John Richardson.

1869.
Panamchand
Surajmal
v.
Bhivraj Dashrat

The petition was heard before Newton and Tucker, J. J. Dhirajlal Mathuradas for the petitioner, The opponent was not represented.

Per Curiam.—The Court finds that the decree is payable by instalments, and that the first of these instalments became payable on the 1st of February 1864. As no application for the execution of the decree could be made till the time fixed for the payment of the first instalment had elapsed, the above date must, for the purposes of sec. 20 of Act XIV. of 1859, be looked upon as the date of the decree; and the application for execution, presented on the 26th of January 1866, was consequently within the time prescribed by law. The Court directs the orders of the lower Courts to be reversed, and the application to be remitted to the Court of first instance, in order that the remaining objections, if any, may be disposed of. Costs in this Court to be borne by the defendant, the judgment debtor.

Civil Petition.

Manchbaram Kalliandas.... *Petitioner.*
Ratilal Lalshankar..... *Opponent.*
Limitation—Execution—Summary Decision—Civ. Proc. Code, sec. 246—Act XIV. of 1859, sec. 22

Jan. 21.

The words "unless some proceeding shall have been taken within one year, &c" in sec. 22 of Act XIV. of 1859, must be read as excluding the day on which application to enforce a summary decision is made.

The petitioner applied, under sec. 246 of the Civil Procedure Code to remove an attachment placed on his property. On the 8th July 1867, the Court passed an order releasing the property from the attachment with costs.

On the 8th July 1868, the petitioner applied to execute that order as to the costs.

Held, that he was in-time.

Semble. An order under sec. 246 of the Civ. Pro. Code is a summary decision within the meaning of sec. 22 of the Limitation Act.

This was an application to set aside an order made by C. G. Kemball, Judge of the District of Surat, on the 31st of July 1868.