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ment, though it has been strenuously argued against, seems to have been properly decided. That addition serves only to state explicitly what was already clearly implied in the document, and what the law would infer from it. In such a case, as ruled in *Aldous* v. *Cornwell*, the alteration, as it is immaterial, does not vitiate the instrument. In the case just cited, the authorities, mentioned in the one at 3 Madras H. C. R. 247, are discussed, and the rigour of the older views of the law on this subject somewhat further mitigated.

The award of interest at a penal rate by the District Court, without any demand for it, or for any sum by way of compensation for special damage, on the part of the plaintiff, was not, we think, in accordance with the law. We must reduce the award to 6 per cent. per annum instead of 24 per cent. Their costs in this Court to be borne by the parties respectively.

[APPELLATE CIVIL JURISDICTION.]

July 15.

Miscellaneous Appeal No. 6 of 1872.

MIR AJMUDDIN, heir of FA'TMA' BEGAM, deceased .... *Appellant.*

MATHURA'DA'S GOVARDHANDA'S, GUL'ABDA'S, and ISHVARDA'S JAGJIVANDA'S. } *Respondents.*

Execution—Attachment of decree—Limitation Act XIV. of 1859, Sec. 20—Mutual relations of decree in original suit, regular and special appeals, and of execution thereon—Application for execution based on the original decree, but reciting those in regular and special appeals.

A notice or order to a judgment-debtor, *A*, not to pay the amount decreed to his judgment-creditor, *B*, will not in any case serve to keep the decree alive in favour of *C*, a judgment-creditor of *B*, at whose instance the notice or order is issued, much less in favour of other judgment-creditors of *B*, with whom *A* had nothing to do. The period during which a decree remains under attachment should not be deducted from the time within which proceedings must be taken for the execution of the decree: *Chandi Prasád Nandi* v. *Raghunáth Dhar* (a) dissented from.

(a) 3 Beng. L. R. Appx. 52.

An application for execution of the decree in the original suit and proceedings thereon, which, without formally and expressly asking for execution of the decrees in regular and special appeal, recognized those decrees, and sought relief consistent with the final decree, can be judicially recognized as a proceeding for the purpose of executing the final decree.

THIS was a miscellaneous appeal from the decision of Mukundráya Maniráya, First Class Subordinate Judge of Surat, directing the execution of a decree obtained by the respondent Mathurádás against Fátmá.

The respondents Gulábdás and Ishvardás were made parties in this Court, they having attached Mathurádás's decree.

The material facts are as follows:—

The decree in the original suit, brought by Mathurádás against Fátmá Begam as the representative of the original debtor, the late Bakshi of Surat, was passed on the 5th August 1863. A regular appeal was disposed of by a decree of 1st December 1863. In Special Appeal No. 211 of 1864, the High Court, on the 5th October 1864, modified the decrees of the courts below by varying, to some extent, the amount awarded, by declaring that certain stipends received since the death of the late Bakshi should not be liable to the creditor's claim, and by similarly exempting one-third of the building called the Daryá Mahál at Surat, which, as the Court held, Fátmá Begam possessed in a right not derived from the deceased Bakshi, though as to the other two-thirds she was his representative. On the 22nd December 1864 the respondent Gulábdás attached the decree so obtained by Mathurádás.

Immediately on obtaining his decree in the original suit Mathurádás sought execution. An order for attachment and sale of the property of the Bakshi in Fátmá Begam's possession was made by the Principal Sadar Amin on the 7th August 1863. This extended to the whole of the Daryá Mahál, as of other property enumerated as the Bakshi's in the list furnished by Mathurádás with his application. Further proceedings on this application appear for the time

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to have been suspended; but after the decision of the High Court had been pronounced, Mathurádás, on the 23rd February 1865, sought execution by an application in which the original decree was set forth as that on which the applicant's right was grounded, but which also recited the regular and special appeals, and set forth the amount due according to the High Court's decree. The money thus realized was paid to Mathurádás's creditor, Gulábdás, on the 4th April 1866.

On the 4th March 1865 Fátmá Begam made an application to the Principal Sadar Amin, in which, referring to the application and the order of the 7th August 1863, she directed attention to the subsequent decrees of the District Court and of the High Court, and prayed that execution might be restricted, according to the terms of the last decree, to two-thirds of the Daryá Mahál and of the *Mogláí haks* as proprietress of which she was the late Bakshi's representative. She also pointed out that Mathurádás's decree having been so attached by Gulabdás, Mathurádás could no longer obtain execution upon it. Gulábdás then tried to have Mathurádás's interest in the decree of the High Court against Fátmá Begam, sold in satisfaction of his own claim. Mathurádás resisted this; and after various intermediate proceedings, the District Judge, on the 13th June 1866, made an order that Mathurádás's execution should proceed, but that the moneys realized should be carried to the credit of Gulábdás.

Proceedings in execution were then renewed, not under a wholly new application, based expressly upon the decree of the High Court, but upon the original application for execution of the Principal Sadar Amin's decree of August 1863. In this application, however, the effect of the subsequent decrees was fully recognized. The Subordinate Judge directed that two-thirds of the Daryá Mahál should be marked off for sale, and one-third reserved to Fátmá Begam as her separate property. Against this order of the 16th October 1866, directing a sale of the two-thirds, Mathurádás appealed to the District Judge, praying that the whole might be sold, and

two-thirds of the proceeds given to him. This the District Judge refused on the 18th October 1867, and on appeal this order was confirmed by the High Court on the 8th April 1868. An application was then presented expressly for execution of the High Court's decree, 211 of 1864, on the 5th October 1869. The order made on this application was the subject of the present appeal, heard by WEST and LARPENT, JJ.

Scoble, Advocate General (with him *Khanderáv Moroji*), for the appellant:—The application for the execution of the High Court's decree is barred by Section 20 of Act XIV. of 1859, no effectual proceedings having been taken within three years next preceding the application, which is dated 5th October 1869, and the decree itself 5th October 1864. The decrees of the lower courts are merged in that of the High Court: *Kistokinker* v. *Burrodacaunt* (b). In this case the Privy Council has held that the final decree is the only one capable of execution.

Macpherson and *Leith* (with them *Dhirajlál Mathurádás*, Government Pleader,) for the respondent Mathurádás. There was a *bonâ fide* proceeding under the application on the 5th of August 1863, which continued to September 1869, when two-thirds of the Daryá Mahál was sold. It is true that the execution of the High Court decree was not expressly sought for, but that decree was mentioned in our application, and the relief we sought was what was given us under that decree. The opposition made by Fátmá Begam could not have been made but for the High Court decree.

Gulábdás and his brother recovered judgment against us, and attached our decree on the 22nd December 1864. An order was issued to Fátmá Begam not to pay us. This attachment is in force still, and we are entitled to claim the deduction of the time since it was first placed: *Chandi Prasád Nandi* v. *Raghunáth Dhar* (c).

(b) 10 Beng. L. Rep. 101. (c) 3 Beng. L. R. Appx. 52.

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All the steps taken subsequent to the High Court decree, which was brought to the notice of the executing Court, and was fully recognized by it, should be regarded as proceeding in execution of that decree ; *Bipro Doss* v. *Chunder Seekar* (*d*).

Dhirajlál Mathurádás for the respondents Gulábdás and Ishvardás :—On the 16th of July 1866 the District Judge, on the application of Mathurádás, directed him to proceed with the execution of his decree, and pay over the proceeds to us. Since this time Mathurádás acted as our agent. The prohibitory order issued to him and Fátmá Begam on the 10th of August 1868 keeps the decree alive for us.

It being clear that all the proceedings after the passing of the High Court decree referred to it, the omission to ask for its execution in express terms was at most an irregularity which can be corrected even now : *Chowdhry Parladh* v. *Chowdhry Janardan* (*e*).

All that Section 20 of the Limitation Act requires is, that some proceeding, whether by the Court or by the party, should be taken within three years : *Kondaráju* v. *Rámá Krishnámmá* (*f*).

This has been done. And an attachment itself acts as a perpetual proceeding : *Brooks* v. *Páttam Mari* (*g*).

Scoble, in reply :—Execution of the High Court decree, which absorbed the decrees of the lower courts, was never asked for. The case of *Chandi Prasád Nandi* v. *Raghunáth Dhar* is bad law. It is not impossible for a judgment-creditor, whose decree is attached, to take measures for the enforcement of his decree ; and as a fact in this very case Mathurádás did take such measures. Gulábdás attached the benefit coming to the original judgment-creditor under the decree of the High Court ; but as no proceedings were taken under that decree, he could take no benefit.

(*d*) 7 Calc. W. Rep. Civ. Rul. 521, F. B. *id. ib.* 522.

(*e*) 6 Calc. W. R. 15 Mis. Rul.

(*f*) 4 Mad. H. C. Rep. 75.

(*g*) *Idem* 316.

In this case the High Court's decree became extinct three years after it was passed, viz., on the 5th of October 1867.

The judgment of the Court was delivered by

WEST, J.:—It will be convenient in this case first to consider the effect as regards limitation of the attachment of Mathurádás's decree against Fátmá Begam by his own judgment-creditor, Gulábdás. This attachment was made a couple of months after the decree of this Court in the special appeal (211 of 1864), by which the decrees of the lower courts were somewhat modified, and the extent of Mathurádás's rights as against Fátmá Begam finally settled. The attachment was made by a notice under Section 236 of the Code of Civil Procedure, directing Fátmá Begam not to pay, and Mathurádás not to receive, the amount of the decree until authorized by a further order of the Court. It has been argued that this was a step towards the execution of Máthurádás's decree, by which it was kept in force until the order should be withdrawn or superseded, but to this view we cannot accede. It was, no doubt, a step towards the execution of Gulabdás's decree against Mathurádás to attach property or a debt in execution of it, and the attachment having thus been once made, the "proceeding" would continue until the attachment was removed or superseded. This seems to follow from the judgment of Lord Cairns in *Máhárájáh Dhiraj Máhtábchand Báhádur* v. *Bulrám Singh and another* (h). As between Gulábdás and Mathurádás, a portion of Mathurádás's property had been withdrawn from his disposal, in order to make it available for the satisfaction of the former's claim, and so long as this withdrawal continued, the proceeding in execution, though not carried to completion by a sale or realization of the debt, still endured, so that the term of limitation against a further proceeding would have to be counted from its termination. The maintenance of the attachment was, as against Mathurádás, a continued endeavour, tending towards the enforcement of the decree. But how does this affect Fátmá Begam?

(h) 13 Moore I. A. 479.

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The law provided her with a safeguard against execution, when three years should have elapsed, without any proceeding being taken towards enforcing the decree. The order directed to Fátmá Begam having relation to the decree against her, was, it has been urged, a proceeding in execution of that decree. It would be more correct to say that it was a proceeding to prevent the execution. Had Mathurádás sought to enforce his decree for his own benefit, he would have been met by the order. That order empowered Fátmá Begam to withhold the money, if it should be demanded, but she was not, therefore, subjected to a liability to execution for an indefinite period, while the litigation was going on between Gulábdás and Mathurádás, and for three years after its close. The party interested, whichever of them it might be, was bound to take some step towards execution within three years.

Nor can a deduction be allowed, in our opinion, on account of any time, during which, as it is alleged, Mathurádás was prevented by the attachment of his decree from taking effectual steps for getting it executed. The order served on him would not prevent his getting execution with a direction, that the money should be paid into Court. Such an order was, in fact, made in June 1866, with reference to the decree then put into course of execution. And if Mathurádás himself were indifferent, Gulábdás might have obtained execution by the appointment of a manager. It is said no doubt in the case of *Chandi Prasád* v. *Raghunáth Dhar* (i) that a deduction is to be made of the time during which the decree is under attachment; but the reason given for this decision does not seem to be a correct one. The attachment is of a kind which does not prevent the adoption of measures towards keeping the decree in force; and even if it were, the law seems to make no allowance on that account. "*Tempus non currit contra non valentem agere*" is no doubt a correct general rule, but it is so as embodying the provisions of the particular laws on the subject of

(i) 3 Beng. L. Rep. Appx. 52.

limitation, not as furnishing a controlling principle, by which their construction is to be governed. There is here no provision made for an extension of the time on account of impediments or disqualifications, and though "arguments from analogy may apply where a principle of law is involved, (yet) where the Courts are dealing with the positive enactments of a statute, reasonings founded upon analogies are scarcely applicable": *Per Cur*: in *Rámchander Dutt* v. *Jugheschander Dutt* (j).

An addition to the statutable period of limitation is, we think, to be allowed only when it is statutably authorized.

The observations we have just made apply to the other attachments of Mathurádás's decree obtained in this Court in Special Appeal No. 211 of 1864, equally as to the attachment laid on it by Gulábdás on 22nd December 1864. In no case, we think, can it be held that a notice or order to a judgment-debtor, *A*, not to pay the amount decreed to his judgment-creditor, *B*, will serve to keep the decree alive, not only in favour of *C*, a judgment-creditor of *B*, at whose instance the notice is issued, but of *D*, *E*, *F*, &c., other judgment-creditors of *B*, with whom *A* has nothing to do, and whose mutual contentions ought not to deprive *A* of the protection, which, after a reasonable term, the Limitation Law is intended to throw round him.

The question remains whether there have been on the part of Mathurádás proceedings in execution, which independently of the notices already considered, have had the effect of barring the operation of Section 20 of the Limitation Act of 1859. [The learned Judge then, after reviewing the material facts stated above, proceeded as follows :—]

It has been contended for the appellant that Mathurádás, in his several proceedings subsequent to the decision of the High Court, has constantly endeavoured to obtain satisfaction, not in accordance with that decision, but in evasion of it, and on the terms of the decree originally passed in his

(j) 12 Beng. L. R. 229, see p. 232.

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favour by the Principal Sadar Amin. We do not think that there has been any attempt of this kind. The decree of the High Court awarded to Mathurádás a larger sum than that awarded by the Principal Sadar Amin. The decree was necessarily transmitted to the Principal Sadar Amin's Court and made a part of the record there. Mathurádás could not rationally expect that it would be overlooked. His application of the 23rd February 1865 distinctly refers to it, and sets forth the amount due in accordance with it. Again, in his appeal against the District Judge's order of the 18th October 1867, Mathurádás relies on the High Court's decree as giving him a right to have the whole of the Daryá Máhál sold in order that two-thirds of its true value may be realized for him. He, no doubt, strove to make all he could by his decrees; but he seems from the date of the one made by this Court to have accepted it without any attempt at evasion or circumvention of the court below, as finally determining the extent of his rights in execution. There is no reasonable doubt but that the decree of the High Court was fully present to the mind of the Principal Sadar Amin and of the parties throughout the proceedings in execution which followed it; and all alike recognized it as the command, upon which they were to act, whether it extended or restricted the operation of the earlier one given by the Subordinate Court.

But then no application, it is clear, was made to the Principal Sadar Amin expressly for the execution of this Court's decree, except the one in February 1865. This, which was finally disposed of in April 1866, more than three years before 5th October 1869, cannot avail as a proceeding to keep the decree in force for the purposes of the latter application. The question then is, whether the proceedings taken by Mathurádás, though not expressly based on the High Court's decree, can, through their practical identity with those that would have been taken expressly on that decree, through Mathurádás's recognition of that decree, and his desire to give it effect, be regarded as proceedings in execution of it, or to keep it in force.

The relation of the decrees in an original suit, a regular appeal and a special appeal is that of three commands, each of which is capable of operating by itself, but the two earlier of which may be either reversed or adopted by the last, either wholly or partially. In so far as the decree in special appeal coincides with the original decree, it may be regarded as identical with it except as to the modal circumstance of dates: the earlier date is brought forward to that of the renewal, by higher authority, of the first command. In so far as the final decree differs from the first, it is a new order, and no date can be assigned to it but that on which it is made. That "identity" or "adoption" expresses the relation of the two decrees, where they agree, better than any term which may imply the annihilation of the earlier command, is evident when we consider that the plaintiff has to seek his remedy in the lowest court, and that the relief accorded to him there ought not to be altered except so far as it is wrong. In other respects, the command should be adopted, and repeated: Civil Procedure Code Sections 350, 360. There may, under our system of procedure, have been a complete or partial execution of the first decree pending the regular and special appeals: Civil Procedure Code Section 338. If the final decree should reverse the one given in favour of the plaintiff by the Court of first instance, the proceedings in execution under the latter are not therefore null. The purchaser at the execution sale has a good title, though the judgment-creditor must refund the money thus realized. The new command creates a new right, which has to be satisfied as well as may be, but without a positive annihilation of the former command, which still remains a ground for rights acquired under it. But if, after partial execution, the new decree affirms the old, it cannot properly be said to supersede or absorb it in the sense of depriving it of its effect. The judgment-debtor cannot come forward and say "Give me damages for the sale of my house under a decree which does not exist;" nor can the judgment-creditor be heard to say "Give me execution for the whole amount of my new decree, which, apart from the old one, awards me so

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much." The whole litigation having a single aim, and the successive orders being directed to the same object, they must be regarded as identical, where they do not differ; and the execution of one within the limits of their coincidence as the execution of all. It has no doubt been said in the High Courts of Calcutta and Madras, as well as of Bombay, that the lower court's decree being embodied or absorbed in that of the higher court, the latter alone is "the decree enforceable by execution," but these expressions had reference to cases, in which there had not been any execution upon the first decree, and in which the only question was as to the date, from which time was to be counted for limitation. As to this, there ought not, according to our view, to be any hesitation in saying that the last decree furnishes the proper date. As to the relation of the successive decrees to each other, apart from authority, their Lordships of the Privy Council have said in *Kistokinker Ghose Roy* v. *Burrodacaunt Singh Roy* (k) that "If the question were *res integra*, their Lordships would incline to the view taken by the Judges of the High Court in the present case, viz., that execution ought to proceed upon a decree of which the mandatory part expressly declares the right sought to be enforced." They limited themselves to not expressing dissent, in a similar case, from the rulings of the Madras and Calcutta High Courts (l), and we think there is nothing to indicate that their Lordships would accept the doctrine of the later decree being the only one capable of enforcement, in such a sense as to deprive proceedings actually taken on the earlier decree of all efficacy for or against the judgment-creditor in execution of the later.

Still it is possible that proceedings on one decree may agree in external circumstances with those on another without the executions being identical. The same property may be sold in execution of the one or the other of two decrees,

(k) 10 Beng. L. R. 101, see p. 114.

(l) *Arunache Mathudayan* v. *Veludayan*, 5 Mad. H. C. Rep. 215; *Ram Charan Bysak* v. *Lakhi Kant*, 7 Beng. L. R. 704.

according to the application of the judgment-creditor entitled under both; and a proceeding under the one can have no effect as regards the other. The execution proceedings on one might have been taken on that other, but were not, because the judgment-creditor, having a choice, chose otherwise. Is the present a case of this kind? The first and the last decrees being, as we have seen, partly identical, there could not be an execution of the one within the limits of their agreement, which would not objectively be an execution also of the other, but there would be a subjective difference, as Mathurádás desired the execution of the earlier or the later decree, which should regularly have been indicated by his framing his application accordingly. His application was originally limited to the execution of the first decree. It is said that a change of the desire thus expressed could be intimated so as to receive judicial recognition only by a change in the form of this application—by a new application, that is, resting expressly on the last decree. This was clearly not the opinion, however, of the courts below. They allowed execution to proceed on the application of Mathurádás based upon the first decree, notwithstanding those that followed it, not from any forgetfulness of the latter, but because they thought Mathurádás was proceeding, and intending to proceed, only so far as the final decree allowed him. The form of the application for execution of the High Court's decree, had a separate one been made in supersession of the application of the 5th August 1863, would, as only a single form is provided amongst those prescribed by the High Court, have been the same as that original application with merely an intimation in the fourth column of the form, of the numbers and results of the appeals. This could not in strictness be called an application resting directly on the decree in special appeal, but an application similarly framed was deemed sufficient by the Privy Council in the case already referred to. If, therefore, it be, though informally, brought home to the mind of the Judge, who is asked for execution, that in addition to the original decree, there have been decrees

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in regular and special appeals, a proceeding may be one in execution of the last decree (serving to bar limitation) though not expressly based upon it. In the present case, we are satisfied that while the execution sought, and in part obtained, of the one decree was objectively the execution of the other also, the intention of the judgment-creditor was to obtain what the High Court had awarded to him. This was understood by the Court and by the opposite party, and though, no doubt, there was an irregularity in not proceeding expressly upon the final decree, yet the defective intimation of his purpose by Mathurádás does not, under the circumstances, prevent our judicially recognizing that purpose as being to obtain satisfaction, according to the terms of the High Court's decree. The steps taken by him down to the year 1868, may thus, in our view, be regarded as proceedings taken to enforce the decree of the High Court. As such, they bar the operation of the Limitation Act to prevent further execution on the application of the 5th October 1869, and the order of the Subordinate Judge must be confirmed with costs.

Order confirmed.

[APPELLATE CIVIL JURISDICTION.]

July 27.

Special Appeal No. 73 of 1874.

GHELA'BHA'I BHIKA'RIDA'S ....*Appellant.*
PRA'NJIVAN ICHHA'RA'M ....*Respondent.*

Property of purchaser at revenue sale—Registration—Tender of Government rent by defaulter's mortgagee—Collector's refusal to accept it.

The purchaser at a revenue sale, held in default of the payment of assessment, takes free of all incumbrances, although the revenue authorities, without otherwise depriving the defaulter of his right of occupancy, under Section 36 of the Bombay Survey Act I. of 1865, have only sold his right, title, and interest: *Abdul Gani* v. *Krishnáji Bhikáji* (10 Bom. H. C. Rep. 16) and *Gundo Shiddeshvar* v. *Mardan Sáheb (Id. Ib.* 419) followed

What operates to create the property recognized as a right of occupancy is the revenue sale and the consequent entry of the occupant's name in the Collector's books. A memorandum, therefore, declaring a person to be the successful bidder at the sale is not an instrument creating or declaring an