

## APPELLATE CIVIL.

( 54 )

*Before Mr. Justice West and Mr. Justice Finlay.*GULABDAS AND ANOTHER (APPLICANTS) v. LAKSHMAN NARHAR  
(OPPONENT).\*1879  
April 3.*Limitation Act (XV of 1877), Sec. II, Arts. 171 and 179—Decree—Execution—  
Judgment-creditor—Representative.*

The provision of the Limitation Act (XV of 1877), sch. II, art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under secs. 363 or 365 of the Code of Civil Procedure, does not apply to the representative of a deceased judgment-creditor claiming admission to continue execution proceedings commenced by him. The Code of Civil Procedure (Act X of 1877) does not provide that applications for execution shall, like suits, abate by the death of the judgment-creditor; such a representative may therefore, come in at any time, as his coming in is contemplated in art. 179 expl. I of sch. II of the Limitation Act, subject always to the same conditions as would apply to his principle.

THIS was an application for the reversal of the order of Vishnu Moreshvar, Subordinate Judge, first class, at Surat, allowing Lakshman to continue the proceedings begun by his deceased father Narhar in execution of his decree against the applicants after expiration of sixty days from the date of Narhar's death.

*Nanabhai Haridas* for the applicants.

The facts and arguments fully appear from the judgment of the Court delivered by

WEST, J.—The procedure prescribed by the Civil Procedure Code is to be applied, according to section 647, to all miscellaneous proceedings. Under this designation, Mr. Nanabhai urges, must be included proceedings in execution; and as these proceedings have such a character, he contends that the person who seeks to come in as representative of a deceased judgment-creditor is subject to the provisions of section 365 of the Code. But being thus subject to the provisions of section 365, it follows, Mr. Nanabhai urges, that the representative is subject to the limitation prescribed by art. 171 of sch. II of Act XV of 1877. As, therefore, the sons of the deceased judgment-creditor Narhar did not come in within sixty days from his death, they were barred by limitation against admission as his representatives to continue the execution proceedings commenced by him, but abated

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by his death. They might, it is admitted, supposing they were not otherwise barred, make an independent application for execution.

The Code of Civil Procedure does not provide that applications for execution shall, like suits, abate by the death of the judgment-creditor, nor have any cases been cited to us to show that the analogy of the sections applicable to pending suits governs pending proceedings in execution. Before execution can be had at all, a right must have been fully established; and delay is then an indulgence to the judgment-debtor. The legislature may have thought that the ordinary terms of limitation prescribed by art. 179 of sch. II of Act XV of 1877 and the corresponding provisions in Act IX of 1871 afforded protection enough against laches on the part of a judgment-creditor; but we should not, at any rate, be justified in saying without authority that the proceedings in execution abate just as in a pending litigation. Nor, if they do abate, can we properly apply to the application of representatives, coming in to carry on the execution, the limitation prescribed by art. 171 of sch. II of Act XV of 1877, which is expressly confined to the "legal representative of a deceased plaintiff," not of deceased judgment-creditor. The latter may, it seems, come in at any time, as his coming in is contemplated by art. 179, expl. I, subject always to the same conditions as would apply to his principal.

That a law prescribed as general uniformity of procedure does not necessarily imply the same rules of limitation, appears from *Hermitage v. Kilpin*.(1)

It was contended as an alternative argument that Narhar's sons could not come in as mere representatives to carry out his application at all. They were bound, it is said, as representatives, to make a new application on their own account. This objection was not taken below, and goes rather to the form than the substance of their application. They sought admission to execute the decree, and the judgment-debtor knowing this did not raise any question. The objection cannot, therefore, be entertained.

We reject the application.

*Application rejected.*

(1) L. R. 9 Ex. 205.