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[163] APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice F. D. Melvill.

VIDYARAM, Applicant v. CHANDRA SHEKHARRAM AND OTHERS,
Opponents.* [19th November, 1879.]

Code of Civil Procedure, s. 266, cl. (g) of Act X of 1877—Political pension—Attachment.

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On the 28th of September 1877, i.e., three days before the new Code of Civil Procedure (Act X of 1877), came into operation, an application was made for the enforcement of a money decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under s. 216 of the former Code (Act VIII of 1859) a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed at which date the new Code had come into force, and contended that under s. 266, cl. (g) of the new Code, the pension was no longer attachable.

Held, that all proceedings commenced and pending when Act X of 1877 became law were, under the General Clauses Act I of 1868, s. 6, to be governed by the Code theretofore in force, the general rule of construction contained in that section not being affected or varied by ss. 1 and 3 of Act X of 1877; and that a *bona fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment.

THIS was an application for the exercise of the extraordinary jurisdiction of the High Court.

In the year 1861 the applicant Vidyaram obtained against the defendants a money decree, the amount of which did not appear from the proceedings before the Court. In execution of that decree he made an application, on the 28th September 1877, to the Subordinate Judge (First Class) of Surat, praying, among other things for the attachment and sale of a political pension enjoyed by the defendants. The Judge on the same day made an order, under s. 216 of the Civil Procedure Code (Act VIII of 1859), that the defendants should appear on a day fixed and show cause why the decree should not be enforced as prayed for. The defendants accordingly appeared on that day. The new Code of Civil Procedure (Act X of 1877) had then come into operation. The defendants urged (*inter alia*) that s. 266, cl. (g), of that Code excluded political pensions from [164] attachment, and that, therefore, the application for execution, so far as regarded the pension, should be refused.

The Subordinate Judge, Rao Bahadur V. M. Bhide, held that as no order had been passed for the attachment of the pension in question before Act X of 1877 came into force, and s. 266, cl. (g), of the said Act protects such pension from attachment by Civil Courts in execution of decrees, the pension in question was not liable to attachment in execution of the applicant's money decree.

Nanabhai Haridas, Government pleader, for the applicant obtained a rule nisi on the 23rd of January 1879, calling on the defendants to show cause why the Subordinate Judge's order should not be reversed on the ground that the new Code of Procedure did not apply to this case.

Shantaram Narayan showed cause.—So long as Act VIII of 1859 was in force, the applicant's right to attach the pension for the satisfaction of his decree undoubtedly subsisted. And an order to attach the

* Extraordinary Application, No. 9 of 1879.

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pension, if made before that Act ceased to operate, would have been valid. But in this case the Court did no more than summon the parties to appear before itself, and show cause why such an order should not issue. The moment the new Act began to operate an order for attaching a political pension cannot be made. The case of *Ratansi v. Kalianji* (1) does not apply to this case, for there the warrants under which the prisoners were committed to jail bore a prior date. In the present case no order for attachment was made under the old Code. Section 6 of the General Clauses Act (I of 1863) in wide language leaves unaffected matters done under an enactment before its repeal, and saves proceedings commenced before the repeal. But the Court proceeded in this case to do nothing more under the old Act than to summon the parties to show cause why it should not proceed to execute the decree: *Gamble v. Bholagir Mangir* (2).

Nanabhai Haridas, contra.—The proceeding to obtain attachment of the pension was undoubtedly commenced under the old Code, and the General Clauses Act saves proceedings so commenced. [165] All that it was in the power of the applicant to do, was done before the new Code came into force. Section 3 of Act X of 1877 provides that nothing contained in that Act shall affect the procedure prior to decree, which includes its satisfaction, in any suit or appeal presented before this Act comes into force. The Act, therefore, does not apply to the present case. The Legislature did not intend that it should have retrospective effect. At all events, it is not necessary that an actual warrant of attachment should have issued in this case. What has been done, is quite sufficient to preserve to the applicant the right which he admittedly possessed. The judgment of the Court was delivered by:

JUDGMENT.

KEMBALL, J.—This is an application for the exercise of our extraordinary jurisdiction under the following circumstances. An application was made on the 28th September 1877 in execution of an ordinary money decree for the attachment (*inter alia*) of a certain political pension; under the special circumstances of the case it became necessary, agreeably to the provisions of s. 216, Act VIII of 1859, to issue a notice to the parties, against whom execution was sought to show cause why the decree should not be executed, and on the same day the said notice was issued. On the appearance of the aforesaid parties, on the day fixed, it was objected on their behalf that a political pension was not then liable to attachment under Act X of 1877, s. 266, cl. 9, and the Court executing the decree (First Class Subordinate Judge) held the objection to be fatal on the ground that no order for the attachment of the said pension having been made prior to the 1st October 1877, the provisions of Act X of 1877 were applicable to the case and, consequently, so much of the application as related to the political pension was refused.

In showing cause against the rule granted on the 23rd January last, it has been submitted that the ruling of the Full Bench of this Court "in the matter of the petition of *Ratansi Kalianji and six others*" (1) has no application to the present case; and while admitting that, had the order for attachment been actually issued to the *nazir* before the 1st October 1877, the provisions of the old Code would have governed the case, it was

(1) 2 B. 148.

(2) 2 B. H. C. R. 146.

contended that the [166] mere issue of a notice under s. 216 before that date could not take the application out of the scope of the new Code.

No doubt the Full Bench case was much stronger than the one we are now considering; but it seems to us that the principles on which that case was decided, are equally applicable here. All proceedings commenced and pending when Act X of 1877 came into operation are, under Act I of 1868, s. 6, to be governed in their course and conduct by the Act theretofore in force, the general rule of construction contained in that section not being affected or varied by ss. 1 and 3 of Act X of 1877. We are unable to see the force of the argument that there could be no proceeding commenced until the warrant of attachment was placed in the hands of the *nazir*: the only authority cited in support of this proposition (1) has really no application whatever to this case and it seems to us that a *bona fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the issue of a warrant; so long as it is a part of the course of proceedings, it is difficult to see how the nature of the Court's order can effect the question.

We must, therefore, hold that the right which the decree-holder undoubtedly had, under Act VIII of 1859, to satisfy his decree out of the pension in question was, under the circumstances of the case, preserved to him, and the rule must be made absolute with costs.

Order accordingly.

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[167] APPELLATE CRIMINAL.

Before Mr. Justice M. Melvill and Mr. Justice F. D. Melvill.

EMPRESS v. IMAMBU,* [20th November, 1879.]

Poisonous drugs—Bombay Act VIII of 1866—Jurisdiction.

Convictions under s. 11 of Bombay Act VIII of 1866 (Poisonous Drugs Act) can only be obtained outside the Town and Island of Bombay before Magistrates of the first class.

THIS was a criminal review by the High Court, which sent for the papers in the case on an examination of the criminal calendar of the Second Class Magistrate of Indi, within the district of Kaladgi, who had tried and convicted the accused under s. 11 of Bombay Act VIII of 1866, of having sold poisonous drugs without a license, and sentenced him to pay a fine of Rs. 15. It appeared doubtful whether the Second Class Magistrate had jurisdiction to try the case.

There was no appearance either on behalf of the accused or on that of the Crown.

PER CURIAM.

The Court annuls the conviction and sentence for want of jurisdiction.

By s. 11 of Bombay Act VIII of 1866 the conviction must be had before "a Magistrate." Section 2 of the Act defines a Magistrate as "a

* Criminal Review No. 224 of 1879.

(1) 2 B. H. C. R. 146.