

There was no appearance of parties in the High Court.
The following is the judgment of the Court:—

JUDGMENT.

WESTROPP, C. J.—The Subordinate Judge states that the most recent application for execution, in the suits which he enumerates, was made on the 1st of June 1877.

It follows thence that no application, with the exception of the application, the subject of this reference, has as yet been made for execution under Act X of 1877, as that Act did not come into force until the 1st of October 1877.

The third passage in s. 230 of the same Act runs thus:—

“Where an application to execute a decree for the payment of [246] money, or delivery of other property, has been made *under this section*, and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely), &c., &c.” Section 230 is not by any means easy of construction, but we are of opinion that the above-quoted passage governs the whole of what follows in that section, and therefore that, inasmuch as no previous application for execution has been made, under that section, in the suits mentioned by the Subordinate Judge, neither the twelve-years’ bar, nor the three-years’ bar, as laid down in that section, is applicable to the present application for execution in those suits, and hence that application is not barred by s. 230.

5 B. 246=5 Ind. Jur. 534.

APPELLATE CIVIL.

*Before Sir Michael, Roberts Westropp, Kt., Chief Justice and
Mr. Justice Nanabhai Haridas.*

GOVIND SHANBHOG, DECEASED, BY HIS SON AND HEIR,
VANKATESH (Original plaintiff), Appellant v. APPAYA
(Original defendant), Respondent.* [29th November, 1880.]

Limitation Act (IX of 1871), sch. II, art. 167—Decree—Application to enforce decree.

G obtained a decree against the defendant on the 29th November 1867, and applied for execution of it on the 23rd July 1870. After G’s death, his son made an application on the 10th March 1871 praying for substitution of his name in the place of his deceased father, and that the money due under the decree should be recovered and paid to him as heir of the original plaintiff. On the 3rd January 1874, and several times subsequently, the son applied for execution of the decree, his last application being in 1878. Both the lower Courts held that the application of the 10th March 1871 was not an application “to enforce or keep in force the decree”; that the application of the 3rd January 1874 was therefore barred by limitation, having been made more than three years after the first application of the 23rd July, 1870, and that, consequently the subsequent applications were barred. On appeal to the High Court.

Held that the application of the 10th March 1871 was an application “to enforce the decree”, and fell within art. 167 of sch. II of Act IX of 1871.

The High Court accordingly reversed the orders of the Courts below and directed that the decree should be executed, as prayed by the application of the 3rd January 1874.

[R., 19 B. 261 (268).]

[247] THIS was a second appeal from the decision of A. W. Walker, Acting Judge of the District Court of Kanara, in miscellaneous appeal

* Second Appeal No. 356 of 1880.

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No. 7 of 1878, affirming the order of the Second Class Subordinate Judge of Kumta.

APPEL-
LATE
CIVIL.

The following judgment of the District Judge, in appeal, fully states the facts of the case and his reasons:—

“This is an appeal against an order passed by the Second Class Subordinate Judge of Kumta on the 5th day of September, 1878.

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“The original decree-holder made an application for execution of his decree on the 23rd July, 1870. He died, and his son made an application that his name should be substituted on the 10th March, 1871. His name was entered, and the property was sold, on the original application, in April, 1871. The next application for execution was made on the 3rd January, 1874—that is more than three years after the first application. The question for determination is whether the second application was time-barred or not. After the second application there were other applications within three years of each other; but, as held in *Gopal Govind v. Ganeshdas Tejmal* (1), if one of the previous applications was time-barred, the subsequent ones would not avail.

“The Limitation Act in force, when the second application was made, was Act IX of 1871. Under sch II, cl. 167, the application was required to be made within three years from ‘the date of applying to the Court to enforce or keep in force the decree or order.’ The application of the 10th March, 1871, for the substitution of the appellant’s name, was not an application for the enforcing or keeping in force of the decree. It was presented by a pleader, and merely states that the plaintiff was dead, and that the money realized should be paid to his son (present appellant). It is urged that the execution proceedings then going on served to bar limitation; but this is not the case [*Stowell v. Billings* (2), *Jibhaimahipati v. Parbhu Bapu* (3) and other cases cited by the lower Court].

“The first case relied on by the lower Court [*Sheo Pertab Lal v. Issur Roy* (4)] does not, however, apply. Here the appellant’s [248] name was entered, and the inference from that case, if any, would be in appellant’s favour.

“Under the new Limitation Act (XV of 1877) probably the application of March, 1871, would have sufficed; but it must be held that under the former law (Act IX of 1871) the application did not give a fresh starting point.

“I confirm the decision of the lower Court with costs.”

Venkatesh filed a second appeal in the High Court on the 10th September, 1880.

Ghanasham Nilkanth, for the appellant.—The lower Courts have misconstrued the nature of the application of the 10th March, 1871. The present case is governed by *Husain Baksh v. Madge* (5), *Behari Lal v. Salik Ram* (6), *Ohunder Coomar Roy v. Bhogobutty Prosonna Roy* (7), *Unoda Persad Roy v. Sheik Koorpan Alli* (8), *Jamnadas v. Lalitram* (9), *Prabhacararow v. Potannah* (10).

The respondent was not represented.

The following is the judgment of the Court:—

JUDGMENT.

WESTROPP, C.J.—The application of the 10th March, 1871, distinctly asks that money should be levied, under the decree, from the defendant, and

(1) 8 B.H.C.R., A. C. J. 97.

(2) 1 A. 350.

(3) 1 B. 59.

(4) 5 W.R. Mis. App. 23.

(5) 1 A. 525.

(6) *Idem* 675.

(7) 3 C. 235.

(8) *Idem* 518.

(9) 2 B. 294.

(10) 2 M. 1.

paid to Venkatesh Shanbhog as son and heir of the original plaintiff, whose death is stated. It, therefore, seems to this Court to be clearly an application "to enforce" the decree, and to fall within art. 167 of sch. II of Act IX of 1871, and accordingly the orders of the Acting Judge of Kanara and of the Subordinate Judge of Kumbha must be reversed with costs, and the decree be executed as prayed by the *darkhast* of the 3rd January, 1874.

Orders reversed.

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5 B. 249.

[249] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Justice, and Mr. Justice M. Melville:
GHANSHAMLAL (Applicant) v. BHANSALI (Opponent).
[27th January, 1881.]

Code of Civil Procedure (Act X of 1877), s. 266—Jurisdiction—Decree—Execution—Attachment of debts arising out of claims over which the Courts have no jurisdiction—Debt—Subject of the Gaikwar—Subject of a Kathiawar State—Rajkot.

Debts due to a British subject by the Gaikwar Government or by a subject of that Government or of a state in the Province of Kathiawar, are not debts which under s. 266 of the Code of Civil Procedure (Act X of 1877), are liable to attachment in execution of a decree.

Claims over which no Court in British India has jurisdiction are not debts liable to be attached under s. 266 of the Civil Procedure Code, Act X of 1877.

The mere circumstances that the garnishee is at the time of the application for attachment beyond the limits of British India, would not of itself render the debts not liable to be attached.

[R., 26 M. 423 (425, 426) ; D., 36 M. 1 (2) = 10 Ind. Cas. 665 = 22 M.L.J. 149 = 10 M. L.T. 570 = (1911) 13 M.W.N. 249.]

THIS was an appeal, under s. 588 of the Code of Civil Procedure (X of 1877), against an order of Rao Bahadur Mangeshrav Balvant, Subordinate Judge (First Class) at Surat.

The father of the applicant on 23rd September, 1863, obtained against the defendant Bhansali a decree for the execution of which he made several applications. The present was the last of such applications, and was dated 22nd March, 1880. It stated that the balance due on the decree was Rs. 1,68,968-10-0, and prayed for the attachment of the following two claims:—

"1st.—The amount of about Rs. 1,68,000, with interest thereon up to this date, due to the Baroda firm of Bhansali Manekchand Rupchand from the Gaikwar Sarkar on account of the karkhana (establishment) under the control of Jamadar Ganpatrav Talekar. The right to recover the said amount of Rs. 1,68,000.

"2nd.—There is an amount of about Rs. 84,000 due to the Baroda firm of Bhansali Manekchand Rupchand from Dungarshi Devsti, inhabitant of Rajkot. The right to recover the same as well as the right to recover the interest thereon to this date."

The Subordinate Judge rejected this application on the ground that "the claims which the petitioner wishes to have attached are [250] beyond British India; and, looking to the provisions of the law, the Court cannot legally exercise jurisdiction over them." The petitioner appealed to the High Court.

* Appeal from Order No. 21 of 1880.