

1881

BRITO  
v.  
THE SECRETARY OF STATE  
FOR INDIA IN  
COUNCIL.

Judgment must pass for the plaintiffs for Rs. 50. Parties to pay their own costs.

Attorneys for the plaintiffs.—Messrs. *Craigie, Lynch and Owen.*

Attorneys for the defendant.—Messrs. *Hearn, Cleveland and Little.*

## ORIGINAL CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice

Justice Melvill.

August 6.

MAYABHAI PREMBHAI (ORIGINAL DEFENDANT), vs. TRIBHUVANDAS JAGJIVANDAS, BY HIS ASSIGNEE, MOTILAL TRIBHUVANDAS (ORIGINAL PLAINTIFF), RESPONDENT.\*

Decree—Execution—Limitation Act XV of 1877, Schedule II, Clause 180—Civil Procedure Code Act X of 1877, Section 230.

The plaintiffs obtained a decree of the High Court of Bombay against the defendant on 22nd February, 1867. The defendant, after the passing of the decree against him, resided in Ahmedabad. In July, plaintiff assigned his decree to L., who in 1876 assigned it to M. From time to time M. obtained orders for the execution of the said decree, but was always unable to proceed to execution. The last order for execution made by the High Court was on the 4th February, 1879. In April, 1879, the decree was transmitted to the Court at Ahmedabad for execution, and that Court in September, 1879, issued a warrant of arrest against the defendant against the order for which the defendant appealed. The said order was confirmed by the High Court on 10th February, 1880. In April, 1881, the defendant was in Bombay, and M., the decree-holder, obtained a summons calling on defendant to show cause why the decree should not be executed against him. On 3rd May the summons was made absolute. The defendant appealed, and contended that the application for execution was barred by limitation under section 230 of the Civil Procedure Code (Act X of 1877) which was to be read with clause 180 of Schedule II of Limitation Act XV of 1877.

Held, that the application was not barred. Clause 180 of the second Schedule of the Limitation Act XV of 1877 was intended to be independent of section 230 of the Civil Procedure Code, and not to be in any way controlled by it. Section 230 does not apply to decrees made by the High Court.

APPEAL from an order made in chamber by Bayley, J., on 3rd May, 1881, making absolute the summons calling on defendant to show cause why the decree dated 23rd February, 1867, should not be executed against him.

In this suit the plaintiff Tribhuvandas Jagjivandas had obtained a decree against the defendant on 22nd February, 1867, for Rs. 15,582-8-0 and costs.

\* Suit No. 605 of 1866.

On the 6th July, 1872, the plaintiff Tribhuvandas Jagjivandas assigned the above judgment-debt to Lallubhai Balmukundas, his executors, administrators and assigns, for Rs. 6,000.

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On 5th October, 1876, Lallubhai Balmukundas assigned the judgment-debt to Motilal Tribhuvandas, his executors, administrators and assigns, for Rs. 5,000.

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After the passing of the decree, the defendant resided at Ahmedabad. At the date of the application for execution he was in Bombay.

Motilal Tribhuvandas from time to time obtained from the High Court orders for the execution of the said decree, but was unable to execute the same. The last order was made on the 4th February, 1879.

On 15th April, 1879, an order was made by the High Court that the decree should be transmitted to the Court of the Subordinate Judge of Ahmedabad for execution.

On 28th August, 1879, an application was made to the Court at Ahmedabad for execution of the decree, and on 10th September, 1879, a warrant of arrest was issued against the defendant, returnable on 25th October, 1879, but the defendant could not be found. The defendant appealed to the Appellate Side of the High Court against the order of the Court at Ahmedabad by which the warrant of arrest was issued; but the High Court, on 10th February, 1880, confirmed the order.

On 27th February, 1880, the Court at Ahmedabad extended the time for the defendant's arrest to 12th April, 1880. On the 9th April, 1880, a further extension to 12th August, 1880, was granted.

On the 30th April, 1881, a summons was granted, calling on defendant to show cause why the decree should not be executed against him, and on 3rd May, 1881, that summons was made absolute by Bayley, J.

The defendant appealed.

*Starling* (with *Marriott*, Advocate General) for appellant contended that the application was barred by section 230 of the Civil Procedure Code (Act X of 1877), which was to be read with clause

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180 of Schedule II of the Limitation Act XV of 1877. He referred to *Ashootosh Dutt v. Doorga Churn* (1); *Anandrav Chimaji v. Thakarchand* (2); *Ramkishen v. Sedhu* (3); *Byraddi Subbareddi v. Dasappa Ran* (4).

*Lang*, for respondent, was not called upon.

WESTROPP, C. J.—We think the order of Bayley, J., must be affirmed with costs. Clauses 178 and 179 of the second schedule of the Limitation Act show that clause 180 of that schedule was intended to be independent of section 230 of the Civil Procedure Code, and not to be in any way controlled by it. We think that section 230 does not apply to decrees made by the High Courts: see *Unnoda Persaud v. Kristo Coomar* (5); *Thorpe v. Adams* (6); *The Queen v. Champneys* (7).

*Order affirmed.*

Attorney for appellant.—Mr. *Shamrav Pandurang*.

Attorney for respondent—Mr. *J. Macfarlane*.

(1) I. L. R. 6 Calc. 504.

(5) 15 Beng. L. R. 60 (note); S. C. 19

(2) I. L. R. 5 Bom. 245.

Calc. W. R. (Civ. Rul.) 5.

(3) I. L. R. 2 All. 275.

(6) L. R. 6 C. P. 125.

(4) I. L. R. 1 Mad. 403.

(7) L. R. 6 C. P. 384.

## ORIGINAL CIVIL.

*Before Sir Charles Sargent, Kt., Justice, and Mr. Justice Melwill.*

1882  
 March 17.

ABEN SHA SABIT ALI AND ANOTHER, PLAINTIFFS, v. CASSIRAO BABA SAHEB HOLKAR AND OTHERS, DEFENDANTS.\*

*Privy Council, appeal to—Certificate as to value of subject-matter of the suit—Final decree or order, what is a—Interlocutory order—Civil Procedure Code (Act X of 1877), Sections 595, 600.*

An order in a partnership suit for account refusing to allow the plaintiffs to have their accounts taken in a particular manner suggested by themselves, unless they would consent to give certain credits in their accounts to the defendants, is not a final decree within the meaning of clause (b) of section 595 of the Civil Procedure Code, although the effect of such order may be to make it impossible for the plaintiffs to proceed further in the case, and, consequently, an appeal from such an order of the High Court to the Queen in Council does not lie.

\* Late Supreme Court file, *Equity Side*.