

ing respecting antecedent damages or injuries might be taken before the proper tribunal." The observations of Wightman, J., were to the same effect.

The orders of the Courts below must be reversed, and the plaintiff's application of the 12th August, 1879, to enter the names of the legal representatives of the deceased defendants, must be complied with, and the plaintiffs must have the costs of the appeal and of this application.

*Order reversed.*

## APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice Kemball.*

MANOHAR, APPLICANT, *v.* GEBIA'PA, OPPONENT.

October 5.

*Dekkhan Agriculturists' Relief Act XVII of 1879, Sections 47 and 48—Application for execution—Conciliator—Limitation Act XV of 1877, Section 14, para. 3 Article 179, Schedule 2—Court.*

A conciliator appointed under the Dekkhan Agriculturists' Relief Act XVII of 1879 is not a Court. The presentation, therefore, to a conciliator of an application for execution of a decree within the period of limitation does not save the limitation, if the application to the proper Court be time-barred: Act XV of 1877, sec. 14, para. 3; Sched. 2, art. 179; Act XVII of 1879, secs. 47 and 48.

The presentation, to any civil Court, of an application for execution of a decree passed before 1st November, 1879, (the date on which the Dekkhan Agriculturists' Relief Act came into force,) to which any agriculturist residing within any local area for which a conciliator has been appointed is a party, is no legal presentation at all, if the application be not accompanied by the conciliator's certificate.

THIS was an application, in the High Court's extraordinary jurisdiction, for the reversal of an order of W. H. Newnham, Judge of Poona, reversing an order of the Subordinate Judge of Barsi.

Gebiapa held a decree against Manohar. The last application made to enforce it was on the 7th of July, 1877. Within three years of this date, Gebiapa applied to the Subordinate Judge of Barsi to have the decree fully executed. The Subordinate Judge ruled that the application was one to which the Dekkhan Agriculturists' Relief Act XVII of 1879 applied, and that it must, therefore, be accompanied by a conciliator's certificate. Gebiapa was accordingly directed to procure it. Gebiapa applied to a

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conciliator on the 5th of July, 1880,—that is, also within three years of the last application,—but the conciliator having failed to reconcile the parties, he on the 17th of July, 1880, issued the necessary certificate. Gebiapa thereupon applied to the Subordinate Judge on the 23rd of July, 1880,—that is, after the expiration of three years,—and renewed his application.

On these facts the Subordinate Judge considered the application time-barred; but the District Judge thought otherwise, and ordered the execution to proceed against Manohar.

Manohar applied to the High Court.<sup>1</sup>

*Mānekshah Jehangirshah* for the applicant.

*Ghanasham Nilkant* for the opponent.

The judgment of the Court was delivered by

MELVILL, J.—The District Judge has held that the application made to the conciliator to effect an amicable settlement, was a step taken to keep alive the applicant's decree, and that, consequently, a fresh period of limitation commences from the date of that application. The District Judge has, however, lost sight of the circumstance that, in order to give a fresh starting point, the application to take some step in aid of execution must be made "to the proper Court" (article 179, Sched. II, Act XV of 1877). It is impossible to hold that a conciliator appointed under the Dekkhan Agriculturists' Relief Act is a Court. He has no power to decide anything, but can only endeavour to effect a settlement; and, if he fails, must refer the parties to the civil Court.

The applicant alleges that his application was presented to the Subordinate Judge within three years, and that he was referred by the Subordinate Judge to the conciliator; and he wishes that the date on which he first went to the Subordinate Judge, and not the date on which he subsequently applied with a certificate, should be taken as the date of the presentation of his application. But this is impossible. He was bound by law to obtain a certificate from the conciliator before he went to the Subordinate Judge, and the Subordinate Judge could not entertain any application without such a certificate. The application, therefore, which

was made on the 5th July, being unaccompanied by a certificate, cannot be considered to have been legally presented at all.

We think that it is to be regretted that in section 48 of the Dekkhan Agriculturists' Relief Act the words "or application for execution of a decree" were not inserted after the word "suit", as they have been in section 47. It is hard enough that a party who has obtained a decree in a Civil Court should be unable to execute it, until pressure has been put upon him by a conciliator to induce him to forego a portion of his debt. But it is a still greater hardship if the intervention of the conciliator is to have the effect of causing the execution of the decree to become barred by lapse of time. Yet this must be the result, as the law stands, in many instances. We believe that the conciliators are in many places quite unable to keep pace with the work imposed upon them, and that thousands of applications are lying undisposed of in their hands. In the case of contemplated suits, this is not of so much consequence, as section 48 of the Act provides for the deduction, from the period of limitation, of the time occupied in proceedings before the conciliator. But, there being no similar provision in the case of decree-holders, and para. 3 of section 14 of the Limitation Act XV of 1877 being of no use to the decree-holder, inasmuch as a conciliator is not a Court, limitation is running against the decree-holder during the whole period for which the proceeding is pending before the conciliator, and this must in many cases be fatal to the enforcement of his rights. An Act for amending the Dekkhan Agriculturists' Relief Act is before the Legislature, and we trust that the point to which we now call attention will receive the consideration which its great importance deserves.

The order of the District Judge must be reversed, and that of the Subordinate Judge restored. The parties to bear their own costs of appeal and of this application.

*Order reversed.*

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