

## APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Melvill.

JAGJIVAN AMIRCHAND, APPLICANT, v. HASAN ABRAHAM AND OTHERS, OPPONENTS.\*

1883  
January 13.

*Limitation Act XV of 1877, Sec. 7—Suit by guardian of minor—Application by minor for execution of decree.*

The guardian and administratrix of her minor sons obtained a money decree against the defendants in August, 1874, and on the 22nd February, 1875, applied for its execution. The application was struck off on the 30th July, 1875, as no property belonging to the defendants could be found. On the 16th of June, 1881, the guardian died, and one of the sons, on the 20th of October, 1882, soon after attaining his majority made a fresh application for execution of the decree.

*Held* that the fresh application was not time-barred, the time from which the period of limitation began to run against the applicant being the date on which he attained majority—Act XV of 1877, sec. 7.

*Rhodabux v. Budree Narain Singh* (1) followed.

THIS was a reference, under section 617 of the Code of Civil Procedure, by R. S. Madhuvachhram B. Hora, Subordinate Judge of Anklesvar. He stated the case thus:—

“One Bai Premkore, widow of Amirchand Javer, instituted, as guardian of her minor sons, Jagjivan Amirchand, Lalchand Amirchand and Kasturchand Amirchand, a suit against one Hasan Abraham and others for Rs. 38, due on a simple money bond, and obtained a decree on 26th August, 1874. On the 22nd February, 1875, she applied for execution, and a warrant of attachment of the judgment-debtor's property was issued by the Court: but since no property could be found, the *darkhast* was struck off on the 30th July, 1875. From that time up to the date of her death on 10th June, 1881, she merely obtained a certificate under Act XX of 1864 from the District Judge of Surat, authorizing her to administer the estate of her minor sons. After her death no administrator was appointed, but on the 28th October last one of the minors, Jagjivan, who, it was said, had recently attained majority, came forward on behalf of himself and his minor brothers, and presented a *darkhast*, praying for an attachment and sale of whatever moveable property that might be found in the possession of the judgment-debtor, Hasan Abraham.

\* Civil Reference, No. 70 of 1882.

(1) I. L. R., 7 Calc. 137.

1883

JAGJIVAN  
AMIRCHAND  
" "  
HASAN  
ABRAHAM.

"The question referred to the High Court for decision is whether the application was time-barred?"

"Section 7 of Act XV of 1877 provides: 'If a person entitled to institute a suit, or make an application, be at the time from which the period of limitation is to be reckoned a minor, or insane, or an idiot, he may institute the suit, or make the application within the same period after the disability has ceased as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.' This provision regarding applications is not to be found in the old Acts of 1859 and 1871. Section 11 of Act XIV of 1859, which regulated the period of limitation in the case of minors and lunatics, was held in *Rotty Roman Oopadya v. Chuuder Binode Oopadhya* (1) and *Tarucknath Mookerjee v. Poorno Chuuder Chatterjee* (2) as not applicable to execution of decrees. These decisions cannot now be followed, in face of section 7 of Act XV of 1877 above referred to \* \* \* \* \* I am, therefore, inclined to the opinion that the present application made by Jagjivan Amirchand must be accepted as within time."

There was no appearance in the High Court on behalf of any of the parties.

SARGENT, C. J.—We do not think the application is barred. See *Khodabux v. Budree Narain Singh* (3).

(1) 5 Calc. W. R., 10 Mis. Rul.

(2) 8 Calc. W. R., 137.

(3) I. L. R., 7 Calc., 137.

## APPELLATE CRIMINAL.

1883  
Feb. 7.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Melville.*

*In re ABDUL ALI ISHMAILJI AND HIS WIFE HUSENBI.\**

*Husband and wife—Order for maintenance upon husband—Divorce—Effect upon order—Presidency Magistrates' Act IV of 1877, Sec. 234—Mahomedan law—Talake bain—Talak biddat—Borah Mahomedans.*

An order made under section 234 of Act IV of 1877 by the Presidency Magistrate directing a Borah Mahomedan husband of the Imami sect to pay a sum monthly for the maintenance of his wife belonging to the Hanafi sect, does not deprive the husband of his right to divorce his wife, and after such divorce the Magistrate's order can no longer be enforced.

\* Criminal Application for Revision, No. 253 of 1882.