

## APPELLATE CIVIL.

*Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Melvill.*

BAIMANEKBAI, WIFE OF RASTAMJI BERAMJI (ORIGINAL PETITIONER),  
APPELLANT, *v.* MANEKJI KAVASJI AND ANOTHER (ORIGINAL OPPONENTS),  
RESPONDENTS.\*

1880  
December 8.

*Application for probate or letters of administration—Limitation—Act XV of 1877,  
Schd. II, Art. 178.*

Article 178 of schedule II, of Act XV of 1877 has reference only to applications under the Civil Procedure Code (Act X of 1878), and does not apply to applications for probate or letters or certificates of administration.

THIS was an appeal against the order of S. Tagore, Acting District Judge of Surat, in Miscellaneous Application No. 9 of 1879, under Act X of 1865.

The petitioner Mainkbai applied to the District Court of Surat for letters of administration to the estate of one Kavasje Kharsetji who died on the 27th May, 1867. The application was presented on the 26th April, 1879. The Judge rejected it on the ground that it was barred by limitation: He made the following remarks:—

“It is contended by the pleader for the opponents that this application is barred under article 178, schedule II of the Limitation Act (No. XV of 1877), inasmuch as it is presented more than three years after the death of the deceased Kavasji. I am of opinion that this contention is right. The pleader for the applicant argues that the article in question applies only to applications under the Civil Procedure Code,—firstly, because schedule II deals exclusively with such applications, and, secondly, because the preamble restricts the operation of the Act only to ‘certain’ applications, showing, it is argued, that the intention of the Legislature was to deal with applications of a particular class only. But I do not agree in this interpretation. There is nothing in the wording of the article to warrant the narrowing of its scope in the manner suggested, and the term ‘certain’ may have been used to exclude applications of a criminal nature, as distinguished from civil, but not in the still more limited sense contended for by the applicant’s pleader. I, therefore, dismiss the application.” (16th July 1880.)

\* Appeal No. 1 of 1880 under Act X of 1865.

1880

BAI  
MANEKBAI  
v.  
MANEKJI  
KAVASJI.

Manekbai appealed to the High Court.

*Manekshah Jehangirshah* for the appellant.—The District Judge was wrong in holding that the application was barred by article 178 of the second schedule of the Limitation Act. That article does not apply to applications for probate or letters of administration.

*Nagindas Tulsidas* for the respondents.

WESTROPP, C. J.—Inasmuch as we are of opinion that article 178 of schedule II of Act XV of 1877 is limited to applications made under the Code of Civil Procedure, we hold that applications for probate, or letters or certificates of administration, do not fall within that article. An examination of all the other articles in the second schedule relating to “applications”, that is to say, of the third division of that schedule, shows that the applications therein contemplated are such as are made under the Civil Procedure Code. Hence it is natural to conclude that the applications referred to in article 178 are applications *ejusdem generis*, i. e. applications under the Code of Civil Procedure. The preamble of the Act, moreover, purports to deal with “certain applications” only, and not with all applications. We reverse the order of the Acting District Judge of the 16th July, 1880, and direct the present District Judge to proceed to hear and dispose of the cases on its merits. Costs of this appeal and of the application should abide the result of the hearing on the merits.

*Order reversed and case remanded.*

### APPELLATE CIVIL.

1881  
August 15.

*Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Pinhey.*

DAMODARDAS HARIDAS (ORIGINAL DEFENDANT), APPELLANT, v.

UTTAMCHAND SAVIACHAND (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Execution of decrees—Limitation—Civil Procedure Code (Act X of 1877), Sec. 230*

*—Date of the passing of the Code—Date of its coming into force.*

The date referred to in the last paragraph of section 230 of the Civil Procedure Code (Act X of 1877) as the date of “the passing of” that Act held to be the 30th March, 1877, the date when that Act received the assent of the Governor General, and not the 1st October, 1877, the date of the coming into force of that Act.

\* Second Appeal, No. 511 of 1880.