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were *vatandars*. The Subordinate Judge rejected the claim, holding that he had no jurisdiction under the Bombay Vatandar's Act No. III of 1874.

In appeal, Mr. Scott held that the Act did not bar the jurisdiction of the Civil Court in a case of the nature of the plaintiffs' suit. He, accordingly, reversed the decree of the first Court, and remanded the case for trial on the merits.

The defendant appealed to the High Court against the order of remand.

*Shantaram Narayan*, appeared for the appellant.

*G. R. Kirloskar*, for the respondent, took a preliminary objection that, under section 586 of Act X of 1877, no second appeal lay in the case, as the suit was one cognizable by a Court of Small Causes.

*Shantaram Narayan, contra*, relied on *Chaudhri Ranjit Singh* v. *Jafar Ali Khan*(1) in support of the right of second appeal.

SARGENT, C. J.—We think, following *Chaudhri Ranjit Singh* v. *Jafar Ali Khan*(1), that the right of appeal given by sections 588 and 589 of the Code of Civil Procedure from an order of remand contemplated by section 562 is not taken away by section 586.

The Court then heard the appeal on the merits, and confirmed the remand order of the District Judge, with costs.

*Order confirmed.*

(1) I. L. R., 3 All., 18.

## APPELLATE CIVIL.

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

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KRISHNAJI RAGHUNATH KOTHAVLE, DECEASED, BY HIS SON AND HEIR RAMCHANDRA KRISHNA (ORIGINAL APPLICANT), APPELLANT, *v.* ANANDRAV BALLAL KOLHALKAR (ORIGINAL OPPONENT), RESPODNENT.*

*Execution of decree—Futile attachment of property—Subsequent application for arrest—More than three years from decree—Application barred—Limitation Act XV of* 1877, *Sched. II, Art.* 179.

In 1874 the appellant attached certain immoveable property of his judgment-debtor, the respondent. The attachment was disputed, and ultimately, on the 16th July, 1875, was raised. In the same year the appellant brought a suit for a

* First Appeal, No. 30 of 1882.

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declaration that the property in question was liable to attachment, which was finally rejected on the 8th July, 1880. On the 30th November following, the appellant applied for the arrest of the respondent. The lower Court rejected the application as not being made within three years of the decree, as provided by Act XV of 1877, sched. II, art. 179. On appeal to the High Court,

*Held* that the execution process last applied for, was distinct in its nature from, and in no way a continuance or revival of the previous proceedings in execution, and was, therefore, made too late, more than three years having elapsed since the passing of the decree.

*Lilachand Hatibhai* v. *Ganoba* (1) referred to and distinguished.

THIS was an appeal against the decree of Purshotam Sidheshvar, First Class Subordinate Judge of Satara, dated the 20th December, 1880, in *darkhast* No. 1320 of 1880.

On the 30th November, 1880, the appellant Ramchandra, as heir of his father Krishnaji, deceased, applied to the Subordinate Court of Satara for the arrest of the respondent Anandrav in execution of a decree obtained against him by the said Krishnaji in 1874 on an arbitration award. In the interval since obtaining the decree the plaintiff Krishnaji had been engaged in attempting to attach certain property alleged to be the defendant's. The history of such attachment proceedings sufficiently appears from the head-note above. The Subordinate Judge rejected the present application, on the ground that it was barred by article 179 of schedule II of Act XV of 1877, more than three years having elapsed since the passing of the decree.

Ramchandra appealed to the High Court.

*V. M. Pandit* (with him *M. C. Apte*) for the appellant.—The lower Court was wrong in holding the application barred by limitation. The proceedings in the suit, which the appellant instituted in 1875, did not terminate till the 8th July, 1880, and must be supposed to have kept the decree alive till that date. The present application, therefore, ought to be treated as one made in continuance of the old proceedings, and, consequently, was not barred. The learned pleader, in support of his contention, relied upon the cases referred to in the judgment of the Court.

(1) Printed Judgments for 1881, p. 329.

There was no appearance for the respondent.

SARGENT, C. J.—The appellant in this case had filed an award against the respondent on 19th December, 1873, and by his *darkhast* of 1874 applied for and obtained the attachment of certain property of his judgment debtor, which was, however, subsequently removed on the 16th July, 1875, on the application of one Bhaskarav, a minor, represented by his mother and guardian, Lakshimibai. Thereupon the appellant preferred a suit in 1875 to have it declared that the property was liable to attachment, which suit was rejected on the 8th July, 1880 On the 30th November, 1880, the appellant presented a *darkhast* for the arrest of the respondent. The Subordinate Judge rejected the *darkhast* as beyond time, being of opinion that the decision of this Court in *Kalyanbhai Dipchand* v. *Ghamashamlal Jadunataji*(1) was not applicable. In that case, the judgment-creditor had attached the property of his debtor, but the sale had been subsequently restrained by an injunction obtained in a suit brought by a third person against the judgment-creditor. This suit was afterwards dismissed, and the injunction fell to the ground. The representative of the judgment-creditor then applied to the Subordinate Judge to substitute his name for that of his father and to proceed with the case, and the Court held that the application was not barred by article 179 of Act XV of 1877, adopting the view taken in the decisions in *Booboo Pyaroo* v. *Syud Nazir Hossein*(2), *Issurree Dassee* v. *Abdool Khalak*(3), and *Parasram* v. *Gardner*(4) that an application after the removal of an obstacle (such as the injunction was in that case) which has for a time rendered execution impossible, is not an application to execute the decree within the meaning of Act XV of 1877, sched. II, art. 178, but merely an application for the continuance or revival of the former proceedings. In all the above cases, except the case of *Issurree Dassee* v. *Abdool Khalak*(3) the application to the Subordinate Judge was virtually to proceed with the process in execution, which had been temporarily arrested by the intervention of a third person. In this case the execution process had been completed by attachment and sale, and the

(1) I. L. R., 5 Bom., 29.
(2) 23 W. R., 183.
(3) I. L. R., 4 Calc., 415.
(4) I. L. R., 1 All., 355.

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proceeds of the sale paid to the judgment-creditor; the sale was subsequently set aside on the application of the judgment-debtor, and the proceeds of the sale ordered to be refunded. It is not said what was the nature of the fresh application for execution; but, assuming that it was against the same property, the Court may well have held, on the authority of the previous cases, that the application was virtually one to have that part of the execution process repeated which had proved abortive owing to some material irregularity, and, therefore, one in continuance and revival of the old proceedings. In the present case, however, the execution process applied for, was perfectly distinct in its nature from the former one, and in no way connected with it, and the application cannot, therefore, in our opinion, be regarded as one in continuance of the former proceedings, except, indeed, in the same sense in which any subsequent application for execution may be said to be in continuance of a former one, as being one in continuance of the effort to execute the decree. It is to be remarked that there was nothing to have prevented a judgment-creditor who was on the alert from arresting the respondent, at the latest, after the removal of the attachment on 10th July, 1875; but, in any view of the appellant's position, we can discover no way of escaping, in the circumstances of this case, from the express language of the Act, which requires that this application for execution should be within three years of the former one. We have been referred to the case of *Lilachand Hatibhai* v. *Ganoba*(1), where the judgment-creditor had been ordered in November, 1878, to refund to a stranger Rs. 63, part of a sum of Rs. 173 which had been levied by sale of his judgment-debtor's supposed goods, and the Court held that as to the sum of Rs. 63 the judgment-creditor would have three years to *execute the decree* from the date of the order of refund. The Court did not give its reasons, but apparently treated the judgment-debt as restored to that amount, and the decree as so far revived from that date;—it has, however, no application to the present case. We must, therefore, confirm the decree of the Subordinate Judge.

*Decree confirmed.*

(1) Printed Judgments for 1881, p. 329.