

can be gathered by inference from mere probability, so as to make article 30 of schedule II of the Limitation Act bar the plaintiff's suit. We, therefore, reverse the decree of the District Court and restore that of the Subordinate Judge, with all costs on respondents, adding six per cent. interest *per annum* on award of Subordinate Judge from date of his judgment till satisfaction of this decree.

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 MOHANSING
 CHAWAN
 v.
 HENRY
 CONDER.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

CHOGALAL (ORIGINAL PLAINTIFF), APPELLANT, v. MAJOR TRUEMAN
 (ORIGINAL DEFENDANT), RESPONDENT.*

1883

 August 13.

*Decree—Execution—Jurisdiction—The Code of Civil Procedure, Secs. 239 to 244
 —Nasirabad.*

Where a decree passed by a Court governed by the Code of Civil Procedure is sent for execution to another Court in British territory likewise governed by the Code, it is not open to the latter to refuse to execute it on the ground that the former had no jurisdiction. In case of doubt, the Court where execution is sought may adjourn the execution proceedings in order to enable the party interested to make an application to the Court passing the decree, and thence, if necessary, to the higher Courts of the same province in their turn.

THIS was an appeal from an order of C. F. H. Shaw, Judge of Belgaum, refusing to execute a decree.

At suit of the plaintiff, a money decree was passed against the defendant by the Court of the Subordinate Judge of Nasirabad, in the province of Ajmir. On the transfer of the defendant, Major Trueman, to Poona the Court at Nasirabad sent the decree to the District Court at Poona for execution; and the Poona Court made an order for its execution. In the meantime Major Trueman was transferred to Belgaum. The plaintiff thereupon applied to the District Judge of Belgaum for execution. The Judge held that the decree could not be executed in consequence of a formal defect, and expressed an opinion that the Nasirabad Court had jurisdiction. Mr. Trueman appealed against this order

* Regular Appeal, No. 52 of 1882.

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to the High Court, but his appeal was dismissed. The plaintiff, consequently, renewed his application to the District Judge of Belgaum; but that Judge, having changed the opinion he had formerly expressed, ruled that the Nasirabad Court had no jurisdiction to entertain the plaintiff's suit, and again declined to execute its decree.

The plaintiff now applied to the High Court.

Manekshah Jehangirshah for the appellant.—Nasirabad is British territory, to which the Code of Civil Procedure has been extended by the Governor General of India (see page 502 of the *Gazette of India* for 1861). The District Judge was in error in going behind the decree, and holding that the Court which passed it had no jurisdiction. The Code of Civil Procedure, section 239 *et seq.*, forbids him from making any inquiry into the subject. On sufficient cause being shown, all that was open to him was to stay execution, and refer the judgment-debtor to the Court which passed the decree. While the execution was pending in Poona the defendant had appealed to the Commissioner of Ajmir and Mhairwada, who had, in fact, ordered a re-trial, which did not take place through the defendant's own default. Supposing that the Judge at Belgaum could go behind the decree, we maintain that the Nasirabad Subordinate Judge had jurisdiction.

Ferran and Shamrav Vithal for the respondent.—An objection relating to jurisdiction can be taken at any time, and the Judge was right in going into the question. The defendant had never waived his right to take it, although he might have omitted to disclose it. In *Balkrishna v. Aba* (1) the Court held that a decree, which on the face of it showed that it was made without jurisdiction, could not be executed. The existing Code of Civil Procedure, sec. 225 *et seq.*, gives to the Court greater powers to go into questions than did Act VIII of 1859. The bond executed between the parties at Poona on the 13th of April, 1872, shows that the cause of action arose in Poona, and that the Nasirabad Court had no jurisdiction.

The judgment of the Court was delivered by

(1) Printed Judgments for 1876, p. 189.

WEST, J.—A copy of a decree of the Court of the First Class Subordinate Judge at Nasirabad having been sent for execution to the District Court at Belgaum, the District Judge has refused to execute it, on the ground that the Nasirabad Court had not jurisdiction to make the decree. Poona, the District Judge has found, was the seat of the obligation merging the earlier one, the locality of which was Nasirabad. There might be some room for this contention were the question an open one, but we do not think it is. Nasirabad is in British territory. The Code of Civil Procedure was introduced into Ajmir by a notification in the *Calcutta Government Gazette* of 1861, page 502; and Nasirabad is a part of the province of Ajmir. The intention of the Civil Procedure Code, as shown by sections 239 and 242, is manifestly that a Court to which a decree is sent for execution by another under the same Government, and the same law of procedure, shall not take on itself the trial of whether the Court which passed the decree had jurisdiction to make it or not. In case of doubt, the Court where execution is sought may adjourn the execution in order to enable the party interested to make an application to the Court passing the decree. Thence the applicant may of course proceed by appeal, if dissatisfied, in the ascending scale of Courts until he reaches the highest of the province in which the decree was made. It is intended that the decree of this Court, or of the lower Court at which proceedings in the suit have ceased, shall be conclusive. A contrary rule would virtually subject the decrees of the Civil Courts to revision and reversal by superior Courts (or even equal or inferior ones) to which they are not subordinate. When the time allowed for an application, if any, has elapsed, the Court to which the decree has been sent, must accept it as a valid one without going into further inquiries, or overruling the judgment of the Court which tried the case. We, therefore, reverse the order of the District Court of Belgaum with costs, and direct that execution proceed according to law.

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v.
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Order reversed.