

part with them. The Court disbelieved this statement, and fined him Rs. 75, under s. 174 of the Civil Procedure Code.

Thereupon Premchand filed the present application, under the extraordinary jurisdiction of the High Court, praying for a reversal of the lower Court's order, on the ground that it was illegal *ad ultra vires*.

The High Court granted a rule *nisi*, calling upon the Judge of the Small Cause Court to show cause why the order should not be set aside or varied.

Govardhan M. Tripathi, for the applicant.

JUDGMENT.

WEST, J.—In this case the Judge of the Small Cause Court at Ahmedabad has fined the applicant Rs. 75 for not producing a document which he had been summoned to produce. The applicant came to the Court, but then stated on oath that he had not the document, and could not produce it. Thereupon the Judge disbelieving this statement fined him ostensibly under the provisions of s. 174 of the Code of Civil Procedure. A careful perusal of that section, however, shows that the present case did not fall within it. The jurisdiction to punish under the enactment exists only in the case of a witness, who, not having attended on summons, has been arrested and brought before the Court. The case of a witness who, having a document, will not produce it, is provided for by s. 175 of the Indian Penal Code, and a limited summary jurisdiction is given to the Court in such a case by s. 480 of the Code of Criminal Procedure (X of 1882). The mere provision of this mode of procedure by the Legislature implies that another and different one is not intended to be followed; and if the Judge of the Small Cause Court could fine a witness attending his Court under s. 174 [65] of the Code of Civil Procedure, he would deprive him of the appeal given by the law against a similar decision under s. 480 of the Code of Criminal Procedure. Where a witness denies, on oath, that he has the possession or means of producing a particular document, he can, if he has been guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding.

We reverse the order as made without jurisdiction, and direct that the fine paid by the applicant be restored to him.

Order reversed.

12 B. 65.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

LAKSHMIBHAI BAPUJI OKA (*Original Applicant*), Appellant v.
MADHAVRAV BAPUJI OKA AND OTHERS (*Original Opponents*),
Respondents.* [23rd March, 1887.]

Decree—Execution—Maintenance—Decree for payment of an annuity without specifying date of payment—Default in paying such annuity—Enforcement of payment by execution of decree—Limitation—Computation of time.

A Hindu widow obtained a decree, dated 7th September, 1865, directing that a sum of Rs. 86 should be paid to her every year on account of her maintenance.

* Second Appeal, No. 112 of 1886.

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The judgment-debtors paid the annuity for some years. In 1881 the widow applied for execution of the decree, and recovered three years' arrears. In 1885 payments having again fallen into arrear, she again applied for execution, but her application was rejected as barred by limitation, having been made more than three years after the last preceding application.

Held, that the application was not time-barred. The decree created a periodically recurring right. Though no precise date was specified in the decree for payment of the annuity, the judgment-debtors were liable to make the payment on the day year from its date, and thenceforward on the corresponding date year after year. The decree was, as to each year's annuity, to be regarded as speaking on the day upon which for that year it became operative, and separately for each year. The right to execute accruing on a particular day, limitation should be computed from that day should the judgment-debtor fail to obey the order of the Court.

Sakharam Dikshit v. Ganesh Sathe (1), followed.

Sabhanatha Dikshatar v. Subbr Lakshmi Ammal (2) and *Yusufkhan v. Sirdarkhan* (3), distinguished.

[R., 30 M. 504 = 17 M L.J. 402; D., 22 C. 644 (646); 15 Ind. Cas. 389 = 15 O.C. 99.]

[66] THIS was a second appeal from the order of C. B. Izon, District Judge of Ratnagiri, confirming the order of Rav Saheb P. B. Gadgil, Second Class Subordinate Judge of Chiplun, in *darkhast* No. 703 of 1885.

One Lakshmbai, widow of Narayan Bapuji Oka, obtained a decree, dated 7th September, 1865, directing certain property to be delivered up to her for her maintenance, or else a sum of Rs. 36 to be paid to her every year for the same purpose. The judgment-debtors did not assign the property to the widow, but paid the annuity till 1878. In August, 1881, the widow applied for execution of the decree, and recovered three years' arrears of maintenance. The payment having again fallen into arrear, the present application for execution was made. It was dated 6th June, 1885. It was rejected by the Subordinate Judge as barred by limitation, more than three years having elapsed since the last preceding application. This order was confirmed, on appeal, by the District Judge.

Thereupon the decree-holder presented a second appeal to the High Court.

Daji Abaji Khare, for the appellant.—The decree in the present case is to be construed in the same way as a decree ordering payment by instalments or payment of an annuity. Such a decree comes into operation on the day on which such instalment or annuity becomes due. Limitation should, therefore, be computed from that date—*Sakharam Dikshit v. Ganesh Sathe* (1); *Lakshman Ramchandra Joshi v. Satyabhamabai* (4); *Vishu Shambhog v. Manjamma* (5).

There was no appearance for the respondents.

JUDGMENT.

WEST, J.—In the present case a decree, dated 7th September, 1865, ordered the delivery of property to the plaintiff, a widow, for her maintenance, or else payment to her of Rs. 36 a year for the same purpose. The property was not delivered, but the annuity was paid for some years; when a default occurred, the widow sought and obtained execution through the Court for three years' arrears due in August, 1881.

[67] The application, with which we have now to deal, was made on the 6th June, 1885. The District Court has agreed with the Subordinate

(1) 3 B. 193.
(4) 2 B. 494.

(2) 7 M. 80.

(3) 7 M. 83.
(5) 9 B. 108.

Judge in holding the application was barred by limitation as having been made more than three years after the last preceding application under the same decree. For this decision the Courts rely on the cases *Sabhanatha Dikshatar v. Subba Lakshmi Ammal* (1), *Yusufkhan v. Sirdarkhan* (2); but it is to be observed that the former of these cases turned rather on the circumstance that the decree sought to be executed was declaratory only as to the future right, not a command to satisfy it by specified payments. The distinction is important as indicated by the cases *Lakshman Ramchandra Joshi v. Satyabhamabai* (3); *Vishu Shambhog v. Manjamma* (4). A Court in executing a decree cannot itself make a new decree. It can only give effect to a positive command, and dispose of such questions as arise incidentally in giving effect to it. In the present case there was a positive alternative command by the Court, that the defendant should pay the plaintiff Rs. 36 a year, and such a decree would, we think, be subject to the principle laid down in *Sakharam Dikshit v. Ganesh Sathe* (5). There is no precise date specified for payment of the annuity, and this, according to one of the Madras cases, would be an important circumstance against the judgment-creditor; but construing the decree, as it ought to be construed, most favourably to him on whom it bore, we must say that he became liable to pay Rs. 36 on the day year from its date, and thenceforward on the corresponding date year after year. The decree was, as to each year's annuity, to be regarded as speaking on the day upon which for that year it became operative, and separately for each year. If this were not so, the judgment-debtor, by paying regularly for three years, and so intercepting an application to the Court, could escape payment for ever afterwards. The right to execute accruing on a particular day, limitation is, we think, to be computed from that day, should the judgment-debtor fail to obey the order of the Court. Should he omit to pay, he may, [68] as to the particular sum, have the benefit of limitation where that comes in to protect him.

We reverse the decrees below, with costs throughout on the respondents, who are to pay the annuity claimed for each time of payment falling within three years of the application.

Decree reversed.

12 B. 68.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

PARVATIBAI BY HER AGENT SADASHIV B. SATHE (*Original Plaintiff*), *Appellant v. VINAYEK PANDURANG AND OTHERS (Original Defendants), Respondents.** [29th March, 1887.]

Recognized agent—Civil Procedure Code (Act XIV of 1882), s. 37—Agent's right to execute decree obtained by him as agent—Waiver—Execution of decree.

P. filed a suit in the Second Class Subordinate Judge's Court at Mahad. As P. resided at Thana, outside the jurisdiction of the Court of Mahad, she authorized her agent, under a general power of attorney, to conduct the suit on her behalf. The agent carried on the litigation up to the final decree passed by the

* Second Appeal, No. 358 of 1886.

(1) 7 M. 80.
(4) 9 B. 108.

(2) 7 M. 83.

(3) 2 B. 494.
(5) 3 B. 193.