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SEP. 22.
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APPEL-
LATE
CIVIL.
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15 B. 265.

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APPELLATE CIVIL.

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

CHIMNIRAM UMAJI, DECEASED, HIS HEIR, HIS SON TULSIRAM
(Original Plaintiff), Appellant v. HANMANTA VALAD SATVAJI
(Original Defendant), Respondent.* [22nd September, 1890.]

Act VII of 1889, s. 4, sub-s. 1, cl. (b)—Application of—Decrees passed prior to
—Execution of decree after the passing of—Certificate under—Pending proceeding.

Section 4, sub-s. 1, cl. (b) of Act VII of 1889 (1) is not confined to the execution of decrees passed subsequently to the coming into operation of the Act.

[266] Held, that the heir of a judgment-creditor applying for execution of the decree after Act VII of 1889 came into operation, was bound to obtain a certificate of heirship under that Act. The fact that he had already on two occasions presented a *darkhast* which had been disposed of before the Act came into force, did not affect the question.

Balubhai Dayabhai v. Nasar bin Abdul (2) referred to.

THIS was a reference made by M. B. Baker, District Judge of Nasik, under s. 671 of the Civil Procedure Code (Act XIV of 1882.)

One Chinniram Umaji obtained a decree against the defendant, Hanmanta. After Chinniram's death, his son, Tulsiram, on two occasions presented *darkhasts* for the execution of the decree. Upon those *darkhasts* orders were passed against the defendant, and they were thus disposed of. After Act VII of 1889 came into operation, Tulsiram presented a third *darkhast*, for execution without taking a certificate of heirship under the Act. The Subordinate Judge rejected the *darkhast*, on the ground that a certificate was necessary under the Act.

Against this order, Tulsiram appealed to the District Judge, who referred the matter to the High Court; but, subject to the opinion of the High Court, he held that a certificate under the Act was necessary.

In making the reference the District Judge remarked:—"It has been contended that as the former *darkhasts* were admitted before the Act

* Reference No. 21 of 1889.

(1) Section 4:—(1) No Court shall—

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming, of—

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under s. 36 or s. 37 of the Administrator General's Act (II of 1874), and having the debt mentioned therein, or

(iii) a certificate granted under this Act and having the debt specified therein, or

(iv) a certificate granted under Act XXVII of 1860 or an enactment repealed by that Act, or

(v) a certificate granted under the Regulation of the Bombay Code No. VIII of 1827 and, if granted after the commencement of this Act, having the debt specified therein.

(2) The word "debt" in sub-s. (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

(2) 15 B. 79.

came into force, the appellant's status has already been declared, and he has been recognized as the deceased's representative, so that he does not now come in as person claiming to be entitled to the effects of the deceased, but as a person who has been recognized as the owner of the decree, so that no certificate is necessary. I am of opinion that the question of *res judicata* does not come in at all. If the *darkhast* had been pending, no certificate would, I think, have been necessary, on the principle that statutes are *prima facie* deemed to be prospective only. But in the present case the former *darkhasts* had been disposed of, and there was no proceeding pending. The presentation of the present *darkhasts* was the commencement of a new proceeding. Act VII of 1889 relates to procedure. Under it the Court has to take a further substantive step in the execution [267] of the decree than was provided by the old law, and I think that the new proceeding should be governed by the law in force when the application was made—*Shivram Udaram v. Kondiba Muktaji* (1)."

Shantaram Narayan, (Government Pleader), for the Government of Bombay.

Shivram Vithal Bhandarkar (*amicus curiæ*), for the appellant.

Daji Abaji Khare (*amicus curiæ*), for the respondent.

JUDGMENT.

SARGENT, C. J. —The Act VII of 1889 was considered in *Balubhai Dayabhai v. Nasar bin Abdul* (2), where it was held that cl. (b) of sub-s. 1 of s. 4 did not apply to proceedings in execution pending at the time at which the Act came into force. In that case execution proceedings were pending when the Act was passed under a *darkhast* presented before the Act. Here the fact of the appellant having already presented a *darkhast* on two occasions before the Act came into operation, in which orders of arrest were made, cannot affect the question, as they had been disposed of, and there were no proceedings pending when the Act was passed, as was the case in *Balubhai Dayabhai v. Nasar bin Abdul*, so as to make the present application for execution to be regarded otherwise than as an initial one; as to the circumstance that the decree was passed before the Act came into force, we think both the language and object of the Act makes it immaterial.

15 B. 267 = Chitty's S. C. C. R. 252.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice.

SULLEMAN HUSSEIN (*Plaintiff*) v. THE NEW ORIENTAL BANK CORPORATION, LIMITED (*Defendants*).^{*} [15th August, 1890.]

Bill of exchange—Drawer and drawee the same person—Forged endorsement of payee—Payment by drawee on forged endorsement—Liability of drawer—Ambiguous instrument—Election to treat it as a promissory note—Negotiable Instruments Act XXVI of 1881, ss. 6, 8, 17, 30, 32, 78, 85, 92—Review—Practice.

[268] On the 29th April 1889 the plaintiff's brother-in-law, Mahomed Ebrahim, purchased from the defendant's branch at Mauritius a bill of exchange

^{*} Small Cause Court Suit, No. 3133 of 1890.

(1) 8 B. 340.

(2) 15 B. 79.