prescribed by section 13 of the Limitation Act, while there is no provision which entitles a period of subsequent disability to be excluded. To assent to Mr. Gharpure's argument would have the effect of striking section 9 out of the Limitation Act.

Inability to sue is distinct from disability, which means want of legal capacity, and for the purposes of the Limitation Act is the state of being (as section 7 indicates) a minor, insane or an idiot, and having regard to the terms of section 9 of the Limitation Act, it is clear subsequent disability does not stop time that has once begun to run.

Therefore we are of opinion that the contention before us fails and the decree of the lower Appellate Court must be confirmed with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batchelor.

RAMCHANDRA KASTURCHAND (ORIGINAL DEFENDANT 1), APPLICANT, *v.* BALMUKUND CHATURBHUJ (ORIGINAL PLAINTIFF), OPPONENT.*

1904. *August* 15.

Civil Procedure Code (Act XIV of 1882), sections 545, 244—Execution of decree—Order refusing stay—Appeal—Deliberate exercis of dis retion by lower Court.

An order refusing to stay execution of a decree under section 545 of the Civil Procedure Code (Act XIV of 1882) is not appealable.

Musaji Abdulla v. *Damodardas*(1), doubted.

Courts of appeal should not lightly interfere with a discretion deliberately exercised by a lower Court.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against an order passed by G. C. Whitworth, District Judge of Sátára, refusing to stay execution of a money decree.

One Balmukund Chaturbhuj, manager of the firm of Navalram Chaturbhuj, obtained a money decree for Rs. 2,523-9 against the

* Application under extraordinary jurisdiction No. 168 of 1904.

(1) (1888) 12 Bom. 279.

1904.

RAMCHANDRA v. BALMUKUND.

applicant (defendant 1) and his two brothers in the Court of the First Class Subordinate Judge of Sátára. Against the said decree the applicant and his brothers appealed to the District Judge and pending the appeal the plaintiff having applied to the first Court for execution of the decree, the applicant presented an application to the Judge for an order staying execution. The Judge dismissed the application with an endorsement "I do not see ground for staying execution of a mere money decree."

Against the order of the Judge the applicant preferred a miscellaneous appeal and also an application under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) for a *rule nisi* requiring the plaintiff to show cause why the order should not be set aside.

Ramdatt V. Desai appeared for the applicant (defendant 1) and stated that though he sought relief by a miscellaneous appeal or, in the alternative, by an application under the extraordinary jurisdiction, he should be given relief either in the one form or the other and that he should not be charged court fees with respect to both the reliefs.

JENKINS, C. J.:—This is an appeal from an order of Mr. Whitworth refusing to stay execution of a decree under appeal to the District Court, on an application to him under section 545 of the Code of Civil Procedure. Two questions therefore arise. First, does an appeal lie? Secondly, if it does, ought we to interfere with the discretion of the learned Judge?

Section 545 is not one of those named in section 588 of the Code of Civil Procedure. But Mr. Desai has, in support of his contention that an appeal lies, referred us to a decision of this Court in *Musaji Abdulla* v. *Damodardas*[1], in which it was held that an order by a District Judge under section 545 of the Code of Civil Procedure refusing to stay execution is a decree as defined in section 2, and is therefore appealable. The learned Judge arrived at that conclusion by the aid of section 244 (*c*) of the Code of Civil Procedure. But if that section be examined it will be seen that it comes under the heading of the chapter dealing with execution of decrees, which has the title "*Questions for*

(1) (1888) 12 Bom. 279.

Court executing decree," and the opening words of the section are: "The following questions shall be determined by order of the Court executing a decree"; then follow the words on which the learned Judges in that case relied.

With all respect we are unable to see how it can be said that Mr. Whitworth can in any sense be described as the Court executing the decree. He was not executing the decree, he had no power to execute the decree, and no application for execution had been made. Even if the order passed by him involved a question relating to the stay of the execution of a decree, it still would not be a question determined by an order of the Court executing a decree so as to fall under section 244. We should therefore have great difficulty indeed in following that decision on the ground on which it is based. But apart from that, we think, it is a sound rule that Courts of appeal should not lightly interfere with a discretion deliberately exercised by a lower Court, and of the respect to which that rule is entitled we have a striking illustration in the recent decision of the Privy Council in *Jaipal Kunwar* v. *Indar Bahadur Singh*(1).

Mr. Whitworth's discretion was exercised, we have no doubt, after full care and consideration and on that ground we think it would be wrong for us to interfere.

We therefore must reject the present application.

Application rejected.

(1) (1904) 26 All. 238.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batchelor.

KAVASJI JAMSETJI (ORIGINAL PLAINTIFF), APPELLANT, *v.* HORMASJI NASSARVANJISHET (ORIGINAL DEFENDANT 1), RESPONDENT.*

1904.
August 16.

Suit to ascertain area of land to which plaintiff is entitled—Confusion of boundaries—Court no power to fix boundaries—No equity shown by plaintiff.

Where the plaintiff sued for recovery from the defendants of possession by severance and demarcation of a certain area of land out of the area described

* Second Appeal No. 116 of 1904.