

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.*

1909.

September 1.

PURUSHOTTAM HARGOVANDAS, LEGAL REPRESENTATIVE OF DECEASED GIRDHARLAL HARGOVANDAS (ORIGINAL PLAINTIFF, JUDGMENT-CREDITOR), APPELLANT, *v.* RAJBAI, LEGAL REPRESENTATIVE OF DECEASED THAKORE HIRAJI DOLATSANG (ORIGINAL DEFENDANT, JUDGMENT-DEBTOR), RESPONDENT.\*

*Civil Procedure Code (Act XIV of 1882), sections 235, 320—Gujarát Tálukdár's Act (Bom. Act VI of 1888), sections 28, 29B and 29E(1)—Decree against Tálukdár—Execution—Decree transferred to Tálukdári Settlement Officer—Notification of management—Submission by persons having claims—Application for the continuance of the execution proceedings against the legal representative of the deceased judgment-debtor—Certificate under section 29E of the Gujarát Tálukdár's Act (Bom. Act VI of 1888)—Managing Officer—Tálukdári Settlement Officer.*

When execution proceedings are commenced against a judgment-debtor, they can be continued after his death by substituting the name of the legal

\* First Appeal No. 196 of 1908.

(1) Sections 28 and 29 B, E of the Gujarát Tálukdár's Act are as follows :—

28. (1) With the sanction of Government, the Tálukdári Settlement Officer or any other officer appointed by Government for this purpose may, upon the written application of a tálukdár in this behalf, take charge of such tálukdár's estate and keep the same under his management for such period as may be agreed upon.

(2) Where a tálukdári estate is held by co-sharers in undivided shares, an application signed by co-sharers holding an aggregate interest of not less than three-fourths of the whole estate shall, for the purposes of sub-section (1), be deemed to be an application by a tálukdár in respect of such estate.

29B. (1) Where any tálukdári estate has been taken under management by Government Officers under section 26 or 28, the Managing Officer may publish in the *Bombay Government Gazette* and in such other manner as the Governor in Council may by general or special order direct, a notice in English and also in the Vernacular, calling upon all the persons having claims against such tálukdár or his property, to submit the same in writing to him within six months from the date of the publication of the notice.

(2) Where the Managing Officer is satisfied that any claimant was unable to comply with the notice published under sub-section (1), he may allow his claim to be submitted at any time after the date of the expiry of the period fixed therein; but any such claim shall, notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of such period until submission.

representative in place of that of the deceased judgment-debtor in the application for execution. It is not necessary to file a fresh application, under the provisions of section 235 of the Civil Procedure Code (Act XIV of 1882).

*Hirachand Harjivandas v. Kasturchand Kasidas* (1), explained.

The effect of section 29E of the Gujarát Tálukdár's Act (Bom. Act VI of 1898) is that before the execution of a decree can be proceeded with the Court must be satisfied that the decree-claim has been duly submitted. If the officer certifies that it has been duly submitted there is an end of the matter. If he does not so certify, the Court must wait for one month from the date of the receipt by the officer of an application for a certificate, and upon being satisfied that the claim has been duly submitted in accordance with the provisions of section 29B of the Gujarát Tálukdár's Act (Bom. Act VI of 1888) it may then proceed with the execution.

The expression 'managing officer' in section 29E of the Act is merely a compendious term for "the Tálukdári Settlement Officer or any other officer appointed by Government to take charge of the Tálukdár's estate and keep the same in his management" referred to in section 28 of the Act, and where the officer who takes charge of the estate and keeps the same in his management is the Tálukdári Settlement Officer, the 'managing officer' is merely a synonym for 'Tálukdári Settlement Officer.'

(3) Every claim against such tálukdár or his property (other than a claim on the part of Government) not submitted to the Managing Officer in compliance with the notice published under sub-section (1), or allowed to be submitted under sub-section (2), shall, save in the cases provided for by section 29F, sub-section (2), clause (c) and by sections 7 and 13 of the Indian Limitation Act, 1877, be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged, unless in any suit or proceeding instituted by the claimant, or by any person claiming under him, in respect of any such claim, it is proved to the satisfaction of the Court that he was unable to comply with the notice published under sub-section (1).

29E. (1) On the publication of a notice under section 29B, sub-section (1), no proceeding in execution of any decree against the tálukdár whose estate is taken under management or his property shall be instituted or continued until the decree-holder files a certificate from the managing officer that the decree-claim has been duly submitted, or until the expiration of one month from the date of receipt by the managing officer of a written application for such certificate, accompanied by a certified copy of the decree.

(2) Any person holding a decree against such tálukdár or his property shall be entitled to receive from the Managing Officer, free of cost, the certificate required by sub-section (1).

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Where an application relating to a claim is presented to the Subordinate Judge and is forwarded by him to the Tálukdári Settlement Officer, it amounts to a submission of the claim in writing within the meaning of section 29B of the Act, if the Tálukdári Settlement Officer is also the managing officer.

FIRST appeal against the decision of Chunilal Lallubhai, First Class Subordinate Judge of Ahmedabad, in an execution proceeding, Darkhast No. 549 of 1896.

One Girdharlal Hargovan filed a suit, No. 63 of 1893, in the Court of the First Class Subordinate Judge of Ahmedabad to recover on the mortgage of the Bhatkonda Táluka the sum of Rs. 8,935 from Thakore Hiraji Dolatsang and his four co-sharer Tálukdárs of the Bhatkonda Táluka in the Ahmedabad District. The Subordinate Judge dismissed the suit. On Appeal, No. 14 of 1894, the High Court, on the 26th August 1895, reversed the decree and allowed the plaintiff's claim. By consent of parties the High Court passed a decree against Thakore Hiraji Dolatsang alone.

On the 25th June 1896 the plaintiff Girdharlal presented an application, Darkhast No. 549 of 1896, for the execution of the decree seeking to recover the decretal debt, Rs. 8,935 and costs, Rs. 1,373, in all Rs. 10,308 by sale of the mortgaged property. On the 8th July 1896 the Court passed an order for the sale of the mortgaged property and transferred the execution proceedings to the Collector under section 320 of the Civil Procedure Code (Act XIV of 1882). The Collector forwarded the proceedings to the Tálukdári Settlement Officer who was invested with the powers of the Collector under the said section.

In the year 1905 the Gujarát Tálukdár's Act (Bom. Act VI of 1888) was amended by Act II of 1905. Under the powers conferred by section 29B, which was added by the amending Act, the Tálukdári Settlement Officer published notices in September 1905 calling upon the creditors of the Bhatkonda estate to submit their claims to him, (as he had already taken up the management of the whole of the Tálukdári estate by a previous notification), within the six months prescribed by the section. In the month of January 1907 and before the expiration of the period of six months from the date of the notification the

judgment-debtor Thakore Hiraji Dolatsang and his son Rajaji Hiraji died leaving them surviving Bai Rajba, widow of Rajaji and daughter-in-law of Hiraji. In the meanwhile, that is, between the date of the notification and the death of the judgment-debtor, the judgment-creditor had presented two applications to the Court for the execution of the decree and those applications were forwarded by the Court to the Talukdári Settlement Officer with its endorsement that the execution should proceed.

On the 3rd July 1907 the judgment-creditor applied to the Court that Bai Rajba was the legal representative of the deceased judgment-debtor and prayed that the execution proceedings be carried on against her. The Court forwarded this application also to the Talukdári Settlement Officer who filed it along with the papers relating to the execution of the decree in his office.

On the 5th July 1907 the judgment-creditor, in compliance with the notices published by the Talukdári Settlement Officer under section 29B of the Gujarát Talukdár's Act (Bom. Act VI of 1888), submitted his claim to that officer and applied that it may be registered under the section. But the Talukdári Settlement Officer on the next day rejected the application on the ground that it could not be registered as it was not made within six months of the publication of the notices, and along with the application sent back the whole record of the execution proceedings to the Subordinate Judge.

Being dissatisfied with the order of the Talukdári Settlement Officer, the judgment-creditor urged objections against it before the Subordinate Judge who dismissed the application for execution on the grounds that the legal representative of the deceased judgment-debtor could not be brought on the record of the existing proceedings and that the application could not be continued as a certificate under section 29E was not produced by the judgment-creditor. The following are extracts from the Subordinate Judge's judgment :—

Now the first point is whether the legal representative of the deceased judgment-debtor Hiraji can be brought on the record in this execution matter. I. L. R. 18 Bom. 224 shows that sections 361 to 372, Civil Procedure Code, do

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not relate to proceedings in execution between the judgment-creditor and judgment-debtor and that the course open to the judgment-creditor is by way of application to execute the decree against the legal representative of the deceased as provided for by section 324 of the Civil Procedure Code. Thus the legal representative of the deceased Hiraji cannot be brought on the record in his darkhast matter and the darkhast cannot proceed, there being no one on the record to represent the deceased's estate. The next question is regarding the certificate. Section 29E of Act VI of 1888 provides :—(1) On the publication of a notice under section 29B, sub-section (1) no proceeding in execution of any decree against the tálukdár whose estate is taken under management or his property shall be instituted or continued until the decree-holder files a certificate from the managing officer, that the decree claim has been duly submitted or until the expiration of one month from the date of receipt by the managing officer of a written application for such certificate accompanied by a certified copy of the decree, &c. Thus the production of certificate from the managing officer is necessary for continuance of the darkhast.

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The plaintiff's own conduct shows that the estate is under the management of the Tálukdári Settlement Officer and that he had not submitted his claim within six months of the publication of the notice. The certificate sent by this Court when the executive matter was transferred to the Collector cannot be held as submission of the plaintiff's claim within the meaning of section 29B of the Tálukdári Act. The pending of the execution-matter before the Tálukdári Settlement Officer also cannot form any excuse for not submitting the claim. The claim is required to be submitted to the Manager and not to the agent of the Collector executing the decree. Thus the pending of the darkhast before the Tálukdári Settlement Officer cannot excuse the plaintiff and the darkhast cannot be continued without the managing officer's certificate. The managing officer did not allow the plaintiff's claim to be submitted after the expiration of six months. Under section 29B (2) of the Tálukdári Act no suit or proceeding is instituted by the plaintiff in respect of the claim not allowed to be submitted by the managing officer and I do not think I am justified in deciding the question as to the inability of the plaintiff to comply with the notice.

The judgment-creditor appealed.

*L. A. Shah* for the appellant (judgment-creditor).—The Subordinate Judge has held that as the judgment-debtor died after the application for execution was presented and proceedings in execution had commenced, the proceedings could not be continued against his legal representative relying on the ruling in *Hirachand v. Kasturchand*<sup>(1)</sup>. But the effect of that ruling

(1) (1893) 18 Bom. 224.

has been misunderstood. The proceedings can be continued against the legal representative and the name of the legal representative is not required by law to be brought on the record. Sections 361 to 372 have been held not to apply to execution proceedings. Section 234 of the Civil Procedure Code gives the right to continue the proceedings against the legal representative: *Hirachand Harjivandas v. Kasturchand Kasidas*<sup>(1)</sup>, *Jeshankar v. Pandya Fulia*<sup>(2)</sup>.

After the execution proceedings were transferred to the Tálukdári Settlement Officer under section 320 of the Civil Procedure Code, the Gujarát Tálukdar's Act was amended in 1905 by Act II of 1905, so that when sections 29A to 29E added by the amending Act, came into force, the proceedings were pending before him and he had notice of our claim; so, no further submission was necessary. We further rely on two applications made by us to the First Class Subordinate Judge which were duly forwarded by him to the Tálukdári Settlement Officer before the expiry of the six months from the date of the notifications. On coming to know of the notifications we made an application as required by section 29B but the Settlement Officer rejected it as beyond time. An issue was raised in the lower Court as to whether there was sufficient excuse for the delay, but no finding was recorded on the issue. We submit that our claim was already before the Tálukdári Settlement Officer by reason of the execution proceedings pending before him at the date of the notifications and the two applications mentioned above were a sufficient compliance with requirements of section 29B. That section does not require the submission to be made in any particular form.

In the present case the Tálukdári Settlement Officer was himself the Managing Officer referred to in section 29B. Even as Tálukdári Settlement Officer he had to manage the estate and he had already taken up the management. Though the designations are different, the two capacities were merged in the same individual and our claim was lying before him either as Managing

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(2) (1900) 2 Bom. L. R. 887.

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Officer or Tálukdári Settlement Officer. We rely on *Pureshottam v. Harbhamji*<sup>(1)</sup>.

*Ooyaji* with *R. W. Desai* for the respondent (legal representative of the deceased judgment-debtor).—Section 234 of the Civil Procedure Code under which the case was decided contemplates a fresh application to be made by the judgment-creditor when the judgment-debtor is dead and the decree is sought to be executed against his legal representative. No such application was made in the present case. The judgment-creditor sought to continue the same proceeding against the legal representative by having recourse to the provisions of sections 361 and 372 of the Civil Procedure Code. This could not be allowed. The ruling in *Hirachand Harjivandas v. Kasturchand Kasidas*<sup>(2)</sup> shows that those two sections do not relate to proceedings in execution. The language of section 234 shows that the application must be made to the Court which passed the decree and not to the Court executing the decree. The ruling in *Jeshankar v. Pandya Fulia*<sup>(3)</sup> has reference to a judgment-creditor and not to a judgment-debtor.

It was argued that as the proceedings were already pending before the Tálukdári Settlement Officer, no further submission was necessary. This argument is based upon an assumption that when the amending Act was passed or when the notifications were issued the proceedings were lying before the Tálukdári Settlement Officer. About that time all the papers in the case were either in the Courts at Ahmedabad or in the High Court in connection with the litigation relating to the *quantum* of the judgment-debtor's share. The two applications relied on were made after the notice was issued under section 29B, so they cannot affect the case.

It is only an accident that the Tálukdári Settlement Officer happened to be the Managing Officer. Under section 230 of the Civil Procedure Code several matters are sent to the Tálukdári Settlement Officer for execution. The duty of the Managing Officer is a branch of the work of the Settlement Officer. It

(1) (1909) 33 Bom. 443.

(2) (1899) 18 Bom. 224.

(3) (1900) 2 Bom. L. R. 887.

cannot be expected that whenever proceedings are sent to him under the Civil Procedure Code, he should at once make inquiries and find out whether such proceedings refer to any managed estates and see whether they amount to notice.

Under section 29E the execution proceedings can neither be commenced or continued without a certificate from the Managing Officer. If any proceeding is sent to him under section 320 of the Civil Procedure Code, he would return it to the Court and the decree-holder must produce a certificate. In the absence of such certificate, the execution cannot even continue.

*Shah* in reply.

SCOTT, C. J.:—The appellant applied to the First Class Subordinate Judge for the disposal of an application for execution of a decree obtained by him so long ago as the 26th of August 1895. The application for execution was made on the 25th of June 1896. The mode in which the assistance of the Court was sought was by sale of the right title and interest of the mortgagor in the mortgaged property which was the subject of the suit. On the 8th of July 1896 an order for sale having been passed the proceedings were transferred to the Collector for execution under section 320 of the Code and by him to the Talukdari Settlement Officer upon whom the powers of the Collector under that section had been conferred. The judgment-debtor was a Talukdar having a small share in a Talukdari estate, and it was in order to have that share realised by sale that the application had been made for execution.

In the month of September 1905, under the provisions of the Gujarat Talukdars Act (Bombay Act VI of 1888), section 29B, a Notification was issued stating that the whole of the Talukdari estate had been taken into the management of the Talukdari Settlement Officer and that persons having claims upon Talukdars or their property should submit the same in writing to the Talukdari Settlement Officer. Previous to the date of that Notification the Talukdari Settlement Officer had taken the estate into his management under the provisions of section 28 (2) of the Act. Before six months had expired from the date of the Notification under section 29B, the judgment-debtor died. The date of his

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death was 21st January 1907. Between the date of the Notification and the date of the death of the judgment-debtor two applications were made to the Court by the judgment-creditor that the execution of the decree might be carried out, and those applications were forwarded by the Court to the Talukdari Settlement Officer with endorsements directing that the execution should proceed.

On the 3rd of July 1907, the plaintiff applied to the Court stating that the present respondent was the legal representative of the deceased judgment-debtor and praying that execution might be proceeded with against her. That application was forwarded by the Court to the Talukdari Settlement Officer and was filed by him in the file of documents relating to the execution of the decree in his office.

On the 5th of July 1907 the plaintiff applied to the Talukdari Settlement Officer to have the claim registered under section 29B of the Act, but the Talukdari Settlement Officer replied the following day that the claim could not be registered as it was not made within six months of the publication of the notice under section 29B. Having come to this conclusion that Officer returned the whole of the documents filed by him to the Subordinate Judge stating that under the provisions of section 29B the claim of the judgment-creditor must be deemed to have been satisfied, and that therefore nothing more could be done under the execution proceeding.

The plaintiff objecting to that decision of the Talukdari Settlement Officer complained to the Subordinate Judge.

The Subordinate Judge has held that the plaintiff cannot succeed in his application for two reasons: first, because, the application cannot be proceeded with as the judgment debtor is dead: and secondly, because, no certificate under section 29E of the Talukdars Act has been filed.

As regards the first point, the conclusion arrived at by the Subordinate Judge is stated by him to be based upon the authority of the case of *Hirachand Harjivandas v. Kasturchand Kasidas*.<sup>(1)</sup> When that case is examined it will be found that it is

(1) (1893) 18 Bom. 224.

no authority for the conclusion arrived at by the learned Judge. It decides that sections 361 to 372, Civil Procedure Code, do not relate to proceedings in execution, and that therefore it is not necessary that the records of the suit should be amended on the death of the defendant after decree, but it also shows that where the judgment-debtor dies after decree the proper course is to apply under section 234 to the Court which passed the decree for liberty to continue the execution proceedings against the legal representative of the judgment-debtor. This is exactly the course which had been followed by the plaintiff in the present case by his application of the 3rd July 1907.

No authority has been cited to us in support of the contention that execution proceedings already commenced cannot be continued after the death of the judgment-debtor by substitution of the name of the legal representative in place of that of the judgment-debtor in the application for execution.

We think therefore that there is no objection to the continuance of the execution proceeding against the present respondent without fresh application under section 235.

The second point upon which the Subordinate Judge came to a decision adverse to the appellant is the point based upon the fact that no certificate of the managing officer such as is contemplated under section 29E of the Talukdar's Act has been filed in the Court.

This section provides that before execution can be proceeded with, one of two things must have happened; either a certificate from the managing officer that the claim has been duly submitted must be filed, or one month must have elapsed from the date of receipt by the managing officer of the written application for such certificate accompanied by a certified copy of the decree.

One of the points which was made on behalf of the respondent in supporting the judgment of the lower Court was that the managing officer mentioned in section 29E is a different officer from the Talukdari Settlement Officer who has the charge of the proceedings in execution and therefore a claim which came to his knowledge as the officer charged with the execution of the decree would not be within his knowledge as managing officer. The

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“managing officer” is however merely a compendious term used in the Act for “the Talukdari Settlement Officer or any other officer appointed by Government to take charge of the Talukdar’s estate and keep the same in his management” referred to in section 28 of the Act, and where the officer who takes charge of the estate and keeps the same in his management is the Talukdari Settlement Officer, the “managing officer” is merely a synonym for “Talukdari Settlement Officer.”

It was next contended on behalf of the respondent that section 29E gives to the officer, whether he be the managing officer, as distinct from the Talukdari Settlement Officer, or to the Talukdari Settlement Officer, the sole right of deciding whether or not a claim has been duly submitted in reply to a notice issued under section 29B.

As the result of the non-submission of the claim would be a statutory discharge under section 29B (3) of the claim of the decree-holder, if such a power were put into the hands of the officer whose duty it is to manage the estate and free it from its liabilities, it would have the effect of making that officer a judge in his own cause. This is a result which can hardly have been intended by the legislature, and we think, therefore, that section 29E must mean that before execution of a decree can be proceeded with the Court must be satisfied that the decree-claim has been duly submitted. If the officer certifies that it has been duly submitted there is an end of the matter. If, however, he does not certify that it has been duly submitted the Court must wait for one month from the date of the receipt by the officer of an application for a certificate, and upon being satisfied that a claim has been duly submitted in accordance with the provisions of section 29B, it may then proceed with the execution. The section cannot mean that a decree-holder without making any attempt to submit a claim may apply to the managing officer for a certificate that he has submitted a claim and after waiting a month may go to Court and demand execution of his decree. The construction which we put upon the section is one which attributes to the legislature both fairness and common sense.

The next question which we will consider is, whether in the present case a claim has been submitted to the Talukdari

Settlement Officer in accordance with the provisions of section 29B. That section provides that the officer may call upon persons having claims to submit the same in writing to him within six months from the date of the publication of notice. The group of sections to which it belongs provides machinery for the ascertainment of the liabilities of Talukdars whose estates are taken under management.

It is not contended that the officer has issued any requisition under section 29C, therefore all that the plaintiff must show is that he has within six months submitted his claim in writing.

Now we know that the plaintiff's claim for execution of the decree has actually been before the Talukdari Settlement Officer from the month of July 1896, that is to say, for a period of 13 years, and we know that two written applications were made by the plaintiff within six months of the date of the issue of the Notification under section 29B, and were in the ordinary course of execution proceedings forwarded by the Subordinate Judge to the Talukdari Settlement Officer. It is contended on behalf of the plaintiff that either of those applications is a written notice of the claim.

No form of Notification of claim is prescribed by the Act, and as the only object aimed at by the legislature is that the officer should be informed of claim against the estate, there is no reason why any written notice of claim, which is submitted to the managing officer should not be held to comply with the requirements of the section.

In our opinion the applications, dated the 6th October 1906 and the 22nd of December 1906, are sufficient notices in writing of the plaintiff's claim.

The plaintiff, although he has thus satisfied us that he has submitted notice in writing of his claim in compliance with the provisions of section 29B, has not been able to show us that he has obtained a certificate from the officer or has applied for one more than a month before the date of his application to the Court. We think that we ought to give him an opportunity, now, of applying for a certificate from the managing officer, and we think that having satisfied us that a claim has been made

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under section 29B, he will be entitled to receive a certificate from that officer. If, however, he does not receive it we direct the Subordinate Judge, after the expiry of one month from the date of the application for certificate, to proceed with the execution of the decree.

We reverse the order of the lower Court and send back the case for disposal in accordance with this judgment.

We think there ought to be no costs of this appeal as the appellant has not produced the certificate and the respondent has failed in his contentions.

The other costs will be costs in the execution.

*Order reversed.*

G. B. R.

## APPELLATE CIVIL.

*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

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*September 14.*

CHHAGANLAL BHAGWANDAS (ORIGINAL OPPONENT No. 2), APPELLANT,  
v. PRANJIVAN SHIVLAL AND OTHERS (ORIGINAL PETITIONERS AND  
HEIRS OF ORIGINAL PLAINTIFF), RESPONDENTS.\*

THE COLLECTOR OF SURAT (ORIGINAL OPPONENT No. 1), APPELLANT, v.  
PRANJIVANDAS SHIVLAL AND OTHERS (ORIGINAL PETITIONERS),  
RESPONDENTS.\*

*Pensions Act (XXIII of 1871), sections 6, 8, 11—Toda giras allowance—  
Purchase of the rights to receive allowance at a Court sale—The allowance  
entered in the name of the purchaser—Application by heirs of the purchaser  
to receive arrears of allowance—Certificate of Collector.*

It was directed by a decree that the purchaser at a Court sale of a Toda Giras allowance should recover from the Collector the amount due for arrears of the allowance from the date of his purchase. An application to execute this decree was made in 1864, in consequence of which the decree-holder's name was entered in the Collector's books as the person entitled to the allowance in question, and the arrears up to 1864 were paid. In 1903, the decree-holder's heirs applied to the Court to recover the arrears of allowance that had remained unpaid since 1896. The Collector contended that the application could not be entertained in the absence of a certificate from the Collector under the provisions of section 6 of the Pensions Act, 1871.

\* Joint Appeals Nos. 70 and 107 of 1906.