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these costs shall have been satisfied, be paid out on the application of the respondent's attorneys.

I make no order as to costs of this notice, because I think that the attorney should have been more prompt in getting his costs taxed and in applying that the fund in Court should be paid out in satisfaction of those costs.

Attorneys for the appellant: *Messrs. Wadia, Gandhi & Co.*

Attorneys for the respondent: *Messrs. Crawford, Brown & Co.*

Order accordingly.

H. S. C.

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Shah.

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August 20.

BAI UJAM (ORIGINAL PLAINTIFF, DECREE-HOLDER), APPELLANT, *v.* BAI RUXMANI (ORIGINAL DEFENDANT, JUDGMENT-DEBTOR), RESPONDENT.*

Limitation Act (IX of 1908), section 15—Decree—Execution of decree—Application to execute the decree—Exclusion of time—Period during which execution of decree is stayed to be excluded in computing period of limitation.

On the 8th August 1908, an application to execute a decree was made. The Court having directed the execution to proceed as to a part of the decree, the judgment-debtor appealed against the order and pending the appeal, the execution of the decree was stayed from the 9th January to the 18th February 1909. On the 12th August 1911, the decree-holder applied again to execute the decree. The lower Courts held that the second application was barred by limitation, it having been made more than three years after the date of the first application. On second appeal:—

Held, that the second application was filed within time, for the applicant was entitled to exclude the period during which the execution of the decree was stayed, in computing the period of limitation for the second application.

* Second Appeal No. 859 of 1912.

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BAI UJAM v. BAI RUXMANI.

SECOND appeal from the decision of E. H. Waterfield, Acting District Judge of Broach, confirming the order passed by B. H. Desai, Subordinate Judge at Ankleshwar.

Proceedings in execution.

The plaintiff Bai Ujam filed a suit against Bai Ruxmani (defendant) in the Court of the Subordinate Judge at Ankleshwar, to recover her *palla* money which was deposited with her father Jagjivan, who was father-in-law of the defendant. The Court passed a decree against the defendant personally and against the estate of Jagjivan. The plaintiff executed the decree and recovered its amount from the defendant.

The defendant appealed against the decree. In appeal, the decree was reversed. The defendant next applied to recover back the money from the plaintiff. She was allowed to do so on her furnishing security for the amount. Motilal thus became a surety for her.

In the meanwhile, the plaintiff appealed to the High Court, where the decree passed by the Subordinate Judge was restored with the variation that the defendant was not personally liable. (See 32 Bom. 394.)

On the 6th August 1908, the plaintiff applied to execute the decree against the defendant and her surety. The Court held that the surety was liable only for costs allowed by the High Court. The surety appealed against the order and pending the appeal obtained an order staying the execution of the decree from the 9th January to the 18th February 1909. Eventually, the surety paid up the costs.

On the 12th August 1911, the plaintiff applied again to execute the decree against the defendant. The execution was resisted on the ground that the application was barred by limitation.

The lower Courts upheld the objection and dismissed the application as barred by limitation.

The plaintiff appealed to the High Court.

G. N. Thakore, for the appellant.

G. S. Mulgaonkar, for the respondent.

SHAH, J. :—This is an appeal by the decree-holder who obtained a decree against the present respondent, and made an application for executing it on the 6th of August 1908. That application was made against the defendant and the surety. The present application was made on the 12th of August 1911. The judgment-debtor objected to the application on the ground of limitation. In both the lower Courts this plea has succeeded, and the Darkhast has been dismissed as being time-barred.

In the second appeal before us it has been contended by the appellant that the application is in time on various grounds. It is not necessary to deal with all the grounds urged in support of the appeal, as it is possible to decide the appeal on one ground only. It is an admitted fact in the case that the present defendant and the surety appealed against the order made by the Court of first instance on the 30th November 1908 directing execution to proceed as to a part of the decree, and in that appeal they obtained an order for staying the execution of the decree which remained in force from the 9th January to the 18th February 1909. It is contended on behalf of the appellant that under section 15 of the Limitation Act this period ought to be deducted from the period of limitation, and that, if that period is deducted, the present application is in time. We think that this contention ought to be allowed. Under section 15, sub-section (1), of the Limitation Act the appellant is clearly entitled to have this time excluded in computing the period of limitation in this case. The

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lower appellate Court, while dealing with this point, thought that as the order of the 30th November 1908 related only to the recovery of costs, that deduction of time ought not to be made. We think that it is perfectly immaterial for the purposes of the present point as to whether the order of the 30th of November 1908 related only to a part of the decree. If the period during which the execution of the decree had been stayed is excluded, the present application is clearly within time.

We hold, therefore, that the application is in time. The order of the lower appellate Court is reversed and the case remanded for disposal according to law.

All costs to be costs in the application.

Order reversed; case remanded.

R. R.

CRIMINAL APPELLATE.

Before Mr. Justice Macleod: on reference from Mr. Justice Heaton and Mr. Justice Shah.

1913.

September 13.

EMPEROR *v.* GANGAPPA KARDEPPA.*

Indian Evidence Act (I of 1872), section 30—Co-accused—Confession—Independent corroboration—Evidence—Practice.

Eleven accused persons were tried for the offence of dacoity. There was no direct evidence against any of them. Seven of these confessed, each one implicating himself and the rest. They were convicted on their own confessions. A question arose whether the remaining four accused, who had not confessed, could be convicted solely on the confessions of their co-accused when they were not corroborated by any independent evidence. Heaton, J. was of opinion that section 30 of the Evidence Act made the confessions, which were already evidence in the case, evidence against the person implicated as well as the other accused. Shah, J. held that section

* Criminal Appeal No. 282 of 1912.