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the sake of the argument then before the Court, Sir Lawrence Jenkins was content to assume that the auction-purchaser filled the representative character. But it must be noticed that the assumption was made only for the purposes of the argument, and the Chief Justice says that "I doubt whether he can claim this character." In view of this uniform course of decisions on this side of India, which appears to me to have a reasonable basis in the words of the Code, I think, that Mr. Rao's argument must be conceded that the auction purchaser here, his client the 3rd defendant, was improperly joined as a party to these proceedings. It follows, therefore, that on this ground, and on this ground alone, the present appeal must be allowed, and the 3rd defendant must have his costs throughout.

*Appeal allowed.*

J. G. R.

## APPELLATE CIVIL.

*Before Mr. Justice Beaman and Mr. Justice Heaton.*

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January 18.

JANARDAN GOVIND KARGUPPIKAR (ORIGINAL PLAINTIFF) APPELLANT v. NARAYAN KRISHNAJI KARGUPPIKAR AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Indian Limitation Act (IX of 1908), Article 182, clauses (5) and (6)—Step-in-aid of execution—Application to transfer the decree to the Court of a Native State for execution.*

An application made to a British Indian Court to transfer its decrees for execution to the Court of a Native State, between whom and the British Government there exists an agreement to execute each other's decrees, is a step-in-aid of execution within the meaning of Article 182 of the Indian Limitation Act, 1908.

\* First Appeal No, 107 of 1917.

FIRST appeal against the decision of S. R. Koppikar, First Class Subordinate Judge at Belgaum, in Darkhast No. 64 of 1916.

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Execution proceedings.

The decree under execution was passed by the First Class Subordinate Judge's Court at Belgaum on December 23, 1903. After several applications, all within time, to execute the decree made by the decree-holder to the Belgaum Court, he applied, on October 20, 1910, to transfer the decree for execution to the Court at Shahapur in the Native State of Sangli. The certificate of transfer was refused on January 25, 1912. He again applied on September 29, 1914, for the transfer of the decree to the Court at Shahapur.

On December 20, 1914, the decree holder eventually applied to the Belgaum Court for execution of the decree.

The Subordinate Judge relying on the decision of *Nawab Saadat Ali Khan v. Nawab Muhammad Ali Khan*<sup>(1)</sup> was of opinion that the two applications of 1910 and 1914 made for the transfer of the decree to the Court at Shahapur did not help to save limitation. He, therefore, dismissed the Darkhast as barred by time.

The decree-holder appealed to the High Court.

*A. G. Desai* and *D. R. Manerikar*, for the appellant:—We say that an application for transfer of a decree of a British Court to that of the Court at Shahapur in the Sangli State for execution is a good step-in aid of execution within the meaning of Clause 5 of Article 182 of the Indian Limitation Act, 1908. The lower Court relying on *Nawab Saadat Ali Khan v. Nawab Muhammad Ali Khan*<sup>(1)</sup> holds it is not. We submit the lower Court is wrong.

<sup>(1)</sup> (1881) P. R. No. 107 of 1881.

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It cannot be denied that an application for transfer of a decree of one British Court to another for execution is a good step-in-aid of execution: see *Todar Mal v. Phola Kunwar*<sup>(1)</sup> and *Chundra Nath Gossami v. Gurroo Prosunno Ghose*<sup>(2)</sup>. The mere fact that the Court to which the decree has been sent in this case happens to be a Court in the Native State does not, we say, make any difference. Decrees of certain Native States including that of Sangli are executed by our Courts as per Notification issued under section 44 of the Code of Civil Procedure, 1908: see Bombay Government Gazette for 1906, Part I, page 939. Section 44 corresponds to the old section 229 B, which was added to the old Code of 1882 for the first time in 1888 by Act VII of 1888, i.e., long after the Punjab case relied on by the lower Court was decided. There was then, i.e., in 1881, no objection to any British Court executing decrees of Native States. Consequently there could also be no question of any reciprocity. But the law has since been amended. A British Court is now bound to execute decrees of certain Native States. Such Native States, in their turn, are as a matter of reciprocity bound to respect our decrees also: see rule 96 at page 107 of the Manual of Circulars for 1912.

It is quite true that there is no duty imposed by the Code on the Native States to execute our decrees; but that is a matter which Legislature perhaps thought it fit to be determined by treaties, or it may be that section 45 of the Code was thought sufficient to meet such cases, because British Court decrees are ordinarily sent for execution through the Political Agent's Court, which is "a Court established or continued by the authority of the Governor-General in Council" within the meaning of that section.

<sup>(1)</sup> (1913) 95 All. 389.

<sup>(2)</sup> (1895) 22 Cal. 375.

Whether, however, Courts in Native States execute our decrees as a matter of reciprocity, or otherwise, the fact remains that Sangli Courts do as a matter of fact execute our decrees. But a Sangli Court, like any other British Court, will not execute a British Court decree, unless the judgment creditor first applies to the Court which passed it to transfer it for execution to itself: vide sections 38, 39 and Order XXI, Rules 6 and 10, Civil Procedure Code, 1908. What the judgment creditor, therefore, asks the British Court to do in such cases is not to execute the decree, but to take a step-in-aid thereof. Such an application is, we submit, a good step-in-aid of execution within the meaning of Clause 5 of Article 182 of the Indian Limitation Act, 1908.

Secondly, we say that notice to the judgment-debtor was ordered to be issued on our application under Order XXI, Rule 11 of the Civil Procedure Code, 1908. We, therefore, get a fresh starting point of limitation under Clause 6 of Article 182 of the Indian Limitation Act, 1908, even though the application itself be not in accordance with law: see *Varadaraja Mudali v. Murugesam Pillai*<sup>(1)</sup> and *Sadashiv v. Narsingrao*.<sup>(2)</sup>

*J. G. Rele* for the respondents:—Section 39 of the Civil Procedure Code, 1908, provides for transfer of a decree to another Court. Under that section the Courts contemplated by the Code to which the decrees could be sent for execution are only British Indian Courts.

In sections 44 and 45 of the Civil Procedure Code, 1908, special provision is made for execution of decrees passed by Courts of Native States in British India and for execution of a decree passed by a British Court established or continued by the authority of the Governor-General in Council in the territories of

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Foreign Prince or State. In this case there is nothing to show that the Court to which the transfer of the decree was sought was a Court established by the authority of the Governor-General in Council within the meaning of section 45 of the Code. On the record of the case there is nothing to justify that the decree in such cases is sent for execution through the Political Agent's Court.

There is no provision in the Code authorising a British Indian Court to transfer its decree for execution to a Court in Native State and, therefore, the application made to the Court at Belgaum to transfer its decree to the Court at Sangli is not an application for transfer of a decree under the Code of Civil Procedure. Though by a notification issued by the Government of India reciprocity is established between Sangli State and British India, it would be effective so far as the recognition of the decrees passed by respective Courts are concerned.

The Madras Full Bench case of *Pierce Leslie v. Perumal*<sup>(1)</sup> is an authority on all fours with the present case. There though a notification was issued with regard to Travancore Courts as a part of the reciprocal arrangement by which these Courts were to execute the decree of British Indian Courts, it was held that the Courts in British India had no power to send their decrees for execution to the Travancore Courts but might and should send to these Courts the documents they require to enable them to execute these decrees under the powers conferred upon them by the Legislative authority in Travancore.

Secondly, the application being wholly incompetent it cannot be said to be an application as a step-in-aid of execution in accordance with law under Article 182,

(1) (1917) 40 Mad. 1069.

Clause (5). What is really executed in the foreign Court is not a decree of the British Court but the order of the foreign Court directing that effect shall be given to the decree of the British Court. The step taken by the British Court is not a step-in-aid of execution of the decree but a step that tends to dispense with such execution in whole or in part by the Courts of British India : see *Nawab Saadat Ali Khan v. Nawab Muhammad Ali Khan*<sup>(1)</sup> and *Pierce Leslie v. Perumal*<sup>(2)</sup>. The execution must be taken in the restricted sense as execution of decrees as provided for by the Civil Procedure Code, 1908. The application must be not only in the regular form but must be one which the Court would be competent to entertain under sections of the Civil Procedure Code. There being no section under which the Court could deal with such an application it is not an application for execution. The words 'step-in-aid of execution' in Article 182 (5) must be read together with the words 'in accordance with law'. When so read the present application does not come under Clause (5) as the application could not be said to be 'in accordance with law': see *Bhagwan v. Dhondi*<sup>(3)</sup>; *Langtu Pande v. Baijnath Saran Pande*<sup>(4)</sup> and *Chattar v. Newal Singh*<sup>(5)</sup>.

The cases of *Varadaraja Mudali v. Murugesam Pillai*<sup>(6)</sup> and *Sadashiv v. Narsingrao*<sup>(7)</sup> are distinguishable on the ground that in these cases there were proper applications for execution. In the present case the application being not provided for by law cannot be said to be an application according to law.

Thirdly, as regards issue of notice, it would not help the appellants to save limitation. No notice was necessary preliminary to the execution of the decree by

(1) (1881) P. R. No. 107 of 1881.

(2) (1917) 40 Mad. 1069.

(3) (1896) 22 Bom. 83.

(4) (1906) 28 All. 387.

(5) (1889) 12 All. 64.

(6) (1915) 39 Mad. 923.

(7) (1914) 17 Bom. L. R. 203.

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a Court at Sangli and the notice was not a notice issued under Order XXI, Rule 22 of the Civil Procedure Code, 1908, but a notice to show cause why the decree should not be transferred: see *Varadaraja Mudali v. Murugesam Pillai*.<sup>(1)</sup>

C. A. V.

BEAMAN, J.:—The decree with which we are concerned was made by the Subordinate Judge of Belgaum. The decree-holder applied to that Court to transfer the execution of the decree or a part of it to the Court of Shhapur, which is a Court of the Native State of Sangli. It is conceded that if this application does not save limitation under Article 182, further execution is now barred. If it does, the latest application for execution is in time.

The point is a very narrow one. It has been considered by a Bench of the Punjab Chief Court (*Nawab Saadat Ali Khan v. Nawab Muhammad Ali Khan*)<sup>(2)</sup> and a full Bench of the Madras High Court (*Pierce Leslie v. Perumal*)<sup>(3)</sup>. These judgments reach the same conclusion. In effect they hold that "execution" in Article 182 must be strictly confined to execution authorised and controlled by the provisions of the Civil Procedure Code. Nothing done to get in the property decreed, which is not done within those statutory limits, is execution at all. The Civil Procedure Code does not authorize any of our Courts to send their decrees for execution to any Court of a Native State. Therefore an application to a British Court to send one of its decrees to the Court of a Native State is not an application to "take a step-in-aid of execution". Although the Madras High Court at any rate rejects the extension of the conclusion to the words 'in accordance with law,' the reasoning appears to me

<sup>(1)</sup> (1905) 39 Mad. 923.

<sup>(2)</sup> (1881) P. R. No. 107 of 1881.

<sup>(3)</sup> (1917) 40 Mad. 1069.

to go quite that length, because what is asked to be done is not expressly authorized by any section of the Civil Procedure Code and is not therefore "execution" or by a slight extension of the same reasoning, a step-in-aid of execution. Such is the simple reasoning adopted by both the Punjab Chief Court, and the Madras High Court in support of the conclusion, that such an application is not within the meaning of Article 182 and does not save limitation. The conclusion itself appears slightly grotesque in view of changed conditions and the very plain policy of the Legislature, as expressed in notifications of the Government of India, embodying the results of its diplomatic dealings with the Native States. It may be very good law, but it is certainly not very good sense. Nevertheless if this is the only construction which can be put upon the Statute law, the answer is plain. It is for the Legislature, not for the Courts, to correct the absurdity. The Courts are not to make the law; they are only to enforce it.

Since, however, in certain sets of facts, the conclusion is plainly repugnant to common sense, it may be worth while to ask whether some other and broader line of reasoning may not yield a more satisfactory result.

In the first place "execution" is a word of general meaning. It implies the activity of Courts in assisting a decree-holder to realize the fruits of his decree. Such activities are certainly controlled by law, and cannot be carried beyond the limits so prescribed. But if we are to be so nicely literal, may we not take advantage of the rather curiously worded phrase "step-in-aid of execution?" An enormous amount of ingenuity and verbal exegesis has been expended upon the words in Article 182 "to the proper Court in accordance with law, to take a step-in-aid of execution." But first let us ask what is the clear object of the Article? This

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surely, to ensure that a decree-holder shall show suitable diligence in obtaining what has been decreed him, and so ending the matter. 'In accordance with law' would thus ordinarily mean, that a decree-holder must apply to the proper Court, that is, the Court having jurisdiction, observing the prescribed procedure, and asking that which it is within the legal competence of the Court to grant as a step-in-aid of the execution of its own decree. Thus such an application must not ask for property which has not been decreed, or for its realization by means unknown to the law. But in this explication of these words we come face to face with the same difficulty which is more prominent perhaps, in applying the later words "a step-in-aid of execution". For if the mode of execution must be one authorized by the Code of Civil Procedure, expressly, in order to make the application accord with the law, it is plain that an application to execute by transference to a Native State Court would not be in accordance with law, and it would be needless to go further, and see whether it might be brought within the contemplation and implicit intention of the words "step-in-aid of execution." There we begin to revolve in a circle, for it is quite clear that if "execution" has the narrow meaning given it by the Punjab Chief Court and the Madras High Court, then no application can be in accordance with law which asks a Court to execute a decree, or take some step-in-aid of executing a decree, however reasonable, in the wide sense legal, and manifestly effective, which is not literally authorized by a section in the Civil-Procedure Code. But it is submitted, with great respect to the learned Judges responsible for these judgments, that while an application may be *prima facie* in all respects in accordance with law, as having complied with all required legal formalities, it need not cease to be so merely because it suggests that the Court should take a step which will certainly in the

result aid it to get its decree executed where it could by no means execute it for itself, such step certainly not contravening any express provision of the Statute law, or conflicting with any principle of law, merely because the Court is not expressly empowered by Statute to have recourse to that extraneous assistance. It is here that some use might be made of the words "step-in-aid of." If it can be shown, as it very easily can, that, while, unfortunately perhaps, our Courts are not expressly empowered to invoke the co-operation of Native State Courts, in the execution of their decrees, they impliedly are, then recourse to that mode of vicarious execution might very reasonably be held to be a "step-in-aid" of execution, even if, on the extremely technical view which has found favour, this might not in verbal strictness be execution.

While section 43, Civil Procedure Code, expressly provides for the execution of decrees of the Courts of Native States by our Courts, there is no corresponding provision empowering our Courts to send their decrees as of right for execution to the Courts of a Native State. I entirely neglect section 45 which really has no bearing upon the point under consideration. Now what is the reason for this? A very plain reason indeed. If we were to examine the Civil Procedure Code of any Native State, with whom reciprocity in this respect had been established, we should be pretty sure to find a provision there of the same kind as section 43 of our Code. We have no power to legislate for Native States, and feeling is so sensitive on these points, that it is easily intelligible that our Legislature would have refrained from inserting any provision in our Statute, which might have had the appearance of asserting a right over the Courts of a Native State. The interchangeable use of civil machinery between British and Native State Courts, is a matter of comity. But once arranged and understood, surely where the conditions

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exist our Courts are intended to make use of it. Else what would be the sense of the Government of India negotiating with Native States, and issuing notifications on the subject? It is conceded, for the argument before us, that sometime prior to the application, a political agreement had been reached under which the Courts of the Sangli State were to execute our decrees, and we were to execute theirs. But if no British Court could, *intra vires*, send any of its decrees for execution to a Court of the Sangli State this agreement would be entirely unilateral, and for any advantage the British Courts were to have of it might as well not have been made. Are we seriously to suppose that the Government of India plays, and plays repeatedly, such a solemn farce as this? It is perfectly well known that as soon as our Courts are notified that they must execute the decrees of any given Native State Court, that Court in turn has undertaken to execute the decrees of our Courts—the reason is the same in both cases. Such arrangements imply, because else they would never be made, that in the judgment of the Government of India the Court or Courts of Native States, with which this degree of reciprocity is established, can be trusted to have attained a level of regularized civil administration, which entitles them to be admitted to the comity of our Courts. In particular cases our Courts may derive as much or even more actual advantage from the agreement, but it is certain that it never would be made, without assurance that the administration of civil justice in the Native Courts concerned was sufficiently developed to make it interchangeable, in these matters of procedure, at any rate, with our own.

When, then, as the result of agreement between the British Government and the Government of any Native State, we find, as we do in this case, that our Courts are

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informed that the Courts of the Sangli State will execute their decrees, and our Courts are directed to execute the decrees of the Courts of the Sangli State, can it be seriously contended that an application by a decree-holder, whose debtor has little or no property outside the jurisdiction of the Sangli Courts, to one of our Courts to send its decree to the Sangli Court for execution, is not in accordance with law? And if in accordance with law, using the words here in a wide, natural sense, then again can it be seriously thought that such an application does not invite the Court to which it is made to take a step-in-aid of execution? For what will be the result? It is certain, and no one disputes this, that if the application is acceded to, the Sangli Court will execute the decree if it can. If it does it will as surely notify the result to the Belgaum Court, and *pro tanto* the latter will have been aided in execution so effectively that it will lie under no further need or duty to exert itself in the matter. In fact, then, it is too clear to admit of argument that the application, being acceded to, and acted upon, will have aided the execution of the decree. Absolutely no distinction further than verbal distinctions which are soon seen to be little better than verbal quibbles, can be drawn between the concrete results of an application to transfer a decree for execution to a Court bound by treaty to execute, and a Court of our own, provided for in section 39. If the latter is a step-in-aid of execution, then so assuredly is the former, if we look at the sense and substance of the thing and not merely at the letter, and the niceties of a hypercritical verbal analysis. -

It is true that British Courts, executing their own decrees in British territory, are restricted to the modes prescribed by the British Statute law. It is permissible to doubt whether this can be predicated with rigid literalism of certain extended and derivative modes of

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execution outside British territory. In this connection it is well to remember what is so often forgotten in this and many other wider and more important connexions, that the conditions under which all forms of administration, judicial as well as executive, are carried on in India are unique and cannot be paralleled in the history of any other country, or in the development of our own by way of what are now almost entirely the self-governing dominions. Dotted about, and enclosed in British India, will be found a great number of Native States, many of them very small. It is no uncommon thing to find a single village under a foreign ruler, entirely surrounded by British territory. The Native State of which the village forms a part, and from which it is thus isolated may lie at a considerable distance, if by the Native State here is meant its capital. All over large parts of our dominion we see foreign territory marching, and intricately interlacing with it. A man may be resident in our territory and possess property worth Rs. 100 there, while he possesses property worth Rs. 1,000 in the next village which is foreign territory and subject to the jurisdiction of foreign Courts. If he is sued in our Courts and a decree for, say Rs. 500, is made against him, it is plain that the amount cannot be realized by execution on his property within the British jurisdiction. The jurist might say that the proper course would be for the decree-holder to take his judgment to the foreign Court and make it the basis of a suit there. And that doubtless would be so between foreign powers, such, for example, as England and France. But to avoid so formal and tedious a procedure, in the special circumstances, understandings have been come to by which, for purposes of execution, our Courts accept and execute the decrees of the foreign Courts, at their very doors, and they in turn accept and execute ours. Such are the actual facts. Is there

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anything in them which makes the procedure thus sanctioned and followed in hundreds of cases, "illegal" in the sense of being "not in accordance with law?" When in this way hundreds of our decrees are in fact executed by foreign Courts, on transference, can it be said that transferring them for execution, under agreement, is not a step-in-aid of execution, or that there is anything more than a distinction without a difference in altering the terminology and saying that in all these cases our Courts do not transfer their decrees for execution but merely send all necessary papers for realization of the decreed property? That is the real point.

Now this again must be borne in mind, that when our Statute empowers one of our own Courts to transfer its decree for execution to another of our own Courts, the latter is bound to accept and execute it precisely as the transferring Court would have done had the property been within its control. The same duty is imposed, the same modes are prescribed, the execution must be subject to exactly the same restrictions. But how can any such terms be imposed upon a foreign Court? Is not here a sufficient reason for the omission upon which the conclusion of the Punjab Chief Court and the Madras High Court rests? If it be once conceded that, owing to special local conditions, the common rules of international law are relaxed by diplomatic arrangement, in many parts of India, we come in sight at once of a satisfactory ground upon which to distinguish execution proceeding against property in, and property outside, the jurisdiction. By what are commonly called political, but are really rather in the nature of diplomatic arrangements, the latter property can be made available for the satisfaction of the decrees of our Courts directly and without the need of filing a fresh suit in the foreign Court, by the simple expedient of

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sending the British Court's decree to the foreign Court for execution. It is true that our Statute can contain (logically) no provision for this mode of execution corresponding precisely with section 39, for the reasons already given. But is that any reason for saying that this is not a mode of execution, essentially in accordance with law, and certainly most effective in the direction of working out vicariously the execution of the decree?

Where, therefore, we find a well recognized and authoritatively established system in actual operation, as we do, for levying execution under decrees of our own Courts upon property outside their jurisdiction through the agency of Foreign Courts, there should be no insuperable difficulty in giving, within these easily intelligible limits, a slightly extended meaning to "execution" and so bringing the law into conformity with sense and facts of every day experience. If the needs of precise verbal accuracy, the needs of legal technicality, overriding all other needs, really are so imperative, let the "execution" mentioned in Article 182 still be regarded as the execution of the Court which passed the decree, but let it also be permitted to call in aid the machinery of a foreign Court bound by reciprocal agreement with it, to aid it in completing that execution. It is true that, as soon as that aid has been invoked, our Statute cannot regulate the mode in which the foreign Court will proceed to execute. That mode may differ in minor points from the mode prescribed by our Statute, but it may be confidently anticipated, in minor points only. Before reciprocal agreements of this kind are made, a substantial agreement in procedure will have been proved; that is to say, no such agreements would be made by our Government with foreign Courts whose methods of execution were purely arbitrary, barbarous and inhumane. Neither the Punjab Chief Court nor the Madras High Court appears to have

questioned the propriety of our Courts sending their decrees, under such agreements, to foreign Courts. They split, however, upon a verbal hair. Doing so is not taking a step in execution but merely taking a step to obtain realization of the decreed property.

If that is the only theoretical distinction, while in fact we know that hundreds of our Courts' decrees have been for years executed in this manner we should much prefer to look to and give effect to the spirit, and discard the letter, even if it be necessary to discard the letter. Such extension, however, as we would here give to the definition agreed upon by the Punjab Chief Court, and the Madras High Court, does not, in our opinion, necessarily violate the letter of Article 182 provided that it is confined to proper cases, cases, that is to say, of foreign Courts into reciprocal engagements with which for the execution of decrees our Courts have through the diplomatic intervention of our Government and of course with its sanction, formally entered. The case before us is the case of a foreign Court which has agreed to execute our decrees, in consideration of our Courts executing its decrees. And our Courts have been informed of that agreement. In every case of that kind we see no reason to hold that an application, well founded, to our Court to transmit its decrees for execution to a foreign Court, is not within the letter as it most surely is within the sense and spirit of Article 182.

HEATON, J.:—We are dealing with an application to execute a decree. Whether or not it must be dismissed as time-barred depends upon the effect of an application to the decretal Court to send the decree for execution to a Court in a Native State other than a Court of the kind described in section 45 of the Civil Procedure Code. This is the whole point in the case. The lower Court decided that such an application did not make a fresh

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starting point of the kind enumerated in Article 182 to the schedule to the Limitation Act and dismissed the application as time-barred. In so doing he followed the decision in *Nawab Saadat Ali Khan v. Nawab Muhammad Ali Khan*<sup>(1)</sup>. The point has very recently been discussed by a Full Bench of the Madras High Court in the case of *Pierce Leslie v. Perumal*<sup>(2)</sup>. The arguments are fully stated in the judgments in that case. But as we find ourselves unable to agree in the final conclusion arrived at by the Judges of the Madras High Court, I set out briefly the reasons which appeal to my mind. I fully agree that an application, such as we are dealing with, is not an application for execution; for it cannot be brought under Rule 11 of Order XXI of the Code; and that it is not within the meaning of the words "applying.....for execution" used in Article 182 of the Indian Limitation Act. But is it not an application in accordance with law to the proper Court to take some step-in-aid of execution? It is conceded in the Madras case, in my opinion quite rightly, that the application is in accordance with law and to the right Court, and all that remains to be considered is whether it is an application to "take a step-in-aid of execution." I understand the Madras Judges to hold that by "execution" here is meant such execution as is provided for by the Civil Procedure Code and for the sake of argument I will concede this, though not convinced, that it really is so. But conceding it for the sake of argument there still remains to be considered the effect of the words "to take some step-in-aid of execution."

I will test the matter in this way: suppose that as the result of an application to send a decree for execution to a Native State Court satisfaction in whole or in part of the decree is obtained, as does in actual practice frequently happen. I feel quite confident that such

(1) (1881) P. R. No. 107 of 1881.

(2) (1917) 40 Mad. 1069.

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satisfaction would be recognized by the Court which made the decree. That Court would not permit its own processes to be used to recover over again from the judgment-debtor what had already been recovered from him in the Native State. So satisfaction of the decree would, in such a case, have been actually aided. What aids the satisfaction of a decree in such a manner aids its execution even though the latter word be used in its strictly technical sense. For however you use the word, even in its most technical sense, execution by the decretal Court is aided, by the doing vicariously of what is that Court's business.

It is the business of the decretal Court to execute its own decrees and the Court is given very comprehensive powers to effect its purpose. It is true that the Court does not go about executing decrees of its own initiative, it waits to be set in motion by the decree-holder; nevertheless, the business of execution is the Court's business so that anything which assists realization of the decree is an aid to the Court and moreover an aid in execution for something is done for the Court which otherwise it might be called on to do for itself "in execution."

It follows that an application to send the decree to another Court is an application to take a step-in-aid of execution. This conclusion, it seems to me, is in accordance with the spirit as well as the letter of the law, for the law intends that reasonable diligence on the part of a decree-holder in getting in the fruits of his decree should be rewarded, not penalized.

Therefore, in my opinion, this appeal should be allowed with costs and the lower Court should be directed to proceed with the Darkhast according to law.

*Decree reversed.*

J. G. R.