
(1880) 03 AHC CK 0006

Allahabad High Court

Case No: None

Narsingh Das

APPELLANT

Vs

Narain Das

RESPONDENT

Date of Decision: March 5, 1880

Citation: (1880) ILR (All) 763

Hon'ble Judges: Straight, J; Oldfield, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Oldfield, J.

I hold that the decree which is now being executed is the decree of the High Court, and the law of limitation which will govern the case is Article 179(2), Act XV of 1879--"(Where there has been an appeal), the date of the final decree or order of the Appellate Court." In the case before us there was an appeal to Her Majesty in Council who affirmed the decree of this Court, the date of the order on that appeal being 12th August 1876, and the present application is within time from that date.

2. I see no reason to doubt that the words "appeal" and "Appellate Court" in Article 179(2) are intended to include appeals to Her Majesty in Council, since we find that these appeals are made the subject of legislation in the Act, which in Article 177 * provides the limitation for the admission of such appeals, and in Article 180 provides the limitation for enforcing orders of Her Majesty in Council made in course of such appeals. Were it otherwise and were appeals referred to in Article 179(2) restricted to appeals preferred to the Appellate Court in India, a party who had appealed to Her Majesty in Council from a decree of a Court in India would be in a worse position, in respect of the limitation for the execution of his decree, than a party who had appealed to an Appellate Court in India.

3. I would decree the appeal with costs and set aside the order of the Judge and remand the case for disposal on the merits.

Straight, J.

4. I am of opinion that the decree which is now proposed to be executed is the decree of the High Court of the 18th August 1871, and that the law of limitation which must govern the matter is contained in Article 179, Act XV of 1877, paragraph 2, column 3. In the present case there was an appeal to Her Majesty in Council, and the decree of this Court was ultimately affirmed by order of the 12th August 1876. During the pendency of that appeal, time did not run and the period of limitation only began on the passing of the final order. The present application by the decree-holder, appellant before us, was made on the- 15th July 1879, and is therefore within time. I see no reason to doubt that the words "appeal" and "Appellate" Court" are now intended to include appeals to Her Majesty in Council, for we find those appeals made the subject of legislation in Act XV, which by Article 177 provides a period of limitation within which they may be admitted. Moreover, Article 180 establishes a limitation for enforcing orders of Her Majesty in Council, a provision, the presence of which may be accounted for by certain observations contained in the judgment of the Privy Council in the case of *Kristo Kinker Ghose Roy v. Burroda Kant Singh Roy* 17 W.R. 297, quoted by Mr. Conlan in arguing this matter before us for the respondent. The question that arose there related to Act XIV of 1859 and neither in that" Statute nor in Act IX of 1871 were there analogous articles to Article 177 or to the last sentence of Article 180. So far as that decision is concerned, it does not appear to me to be otherwise in any way relevant to the present case.

5. I agree that the appeal should be decreed with costs, and that the Judge should dispose of the application of the decree-holder on its merits.

*[Article 177:--

Description of application.	Period of limitation.	Time from which period runs.
For the admission of an appeal to Her Majesty in Council.	Six months. against.]	The date of the decree.