

(1877) 06 CAL CK 0002

Calcutta High Court

Case No: None

Kally Prosonno Hazra

APPELLANT

Vs

Heera Lal Mundle

RESPONDENT

Date of Decision: June 21, 1877

Acts Referred:

- Limitation Act, 1963 - Section 20, 21

Citation: (1877) ILR (Cal) 468

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

In this case, whilst execution proceedings were going on, the judgment-debtor filed a petition in Court notifying payment of a part of the sum due under the decree, and asking for a stay of execution for four months. The judgment-creditor signified his assent to this application by signing the petition, which was granted. The question we have to determine on special appeal is, whether a new period of limitation runs either from the date of this petition under the provisions of Section 20 or from the date of the part-payment under the provisions of Section 21, Act IX of 1871. Both these sections are applicable to "debts and legacies" only, and I do not think that the sum due under a decree is a "debt" within the meaning of these two sections. It seems to me that the proviso to Section 21, which is general, would be unmeaning as applied to sums due under a decree; and the proviso to Article 169, Schedule II would also have been wholly useless if part-payment of money due under a decree had been already provided for u/s 21. Both these arguments, it is true, apply only to Section 21. But I cannot suppose that the word "debt" is used in a different sense in two consecutive sections of the Act. I do not of course mean to say that the sum due under a decree may not sometimes be properly called a "debt;" it is constantly spoken of as a judgment-debt; but taking the whole Act together, I think the "debt" spoken of in Sections 20 and 21 is a liability to pay money for which a suit could be

brought, and not for which judgment has been obtained. The Miscellaneous Special Appeal will be dismissed with costs.

Prinsep, J.

2. I am of the same opinion. I would only add that the fact that it has been thought necessary to make a special proviso in Article 169 Schedule ii of the Limitation Act, seems to show that the ordinary law was not sufficient in this respect as regards decrees or orders of a High Court in its Ordinary Original Civil Jurisdiction. There is no such special provision for other decrees or orders. We cannot apply Section 20 or 21.