

**(1890) 02 CAL CK 0004**

**Calcutta High Court**

**Case No:** None

Tincowrie Dawn

APPELLANT

Vs

Debendro Nath Mookerjee

RESPONDENT

---

**Date of Decision:** Feb. 6, 1890

**Acts Referred:**

- Limitation Act, 1963 - Article 179, 180

**Citation:** (1890) ILR (Cal) 491

**Hon'ble Judges:** Wilson, J

**Bench:** Single Bench

---

### **Judgement**

Wilson, J.

The point raised in this case is a short one. It arises out of a reference to the Registrar, of a very usual kind, to enquire who were entitled to take a share of the sale proceeds of property attached in execution, and that depends upon what valid attachments upon the property were in force or had been ordered.

2. In the course of that reference it became necessary to determine whether Mr. Gasper's client, who is one of the attaching creditors, is entitled to share in the proceeds of sale. The dates, which are important, are the following: - The claimant obtained his decree on the 29th of July 1884. The decree was transmitted to this Court for execution, and on the 23rd of August he applied for execution. On the 26th of that month the property was attached. On the 13th June 1885 an order was made for payment out to the creditor of what had been realised, towards satisfaction of his claim, and on the 8th August 1885 payment was actually made. The next step was an application for execution, the validity of which is in question. The application was made on the 14th September 1888; notice issued on the ground that the decree was more than a year old, and on the 19th December, no cause being shown, attachment issued; more than three years had thus elapsed after anything had been done, when the present attachment was applied for in 1888.

3. The question is whether that attachment is valid or whether it is barred by limitation. Under the former Procedure Code provision was made for the execution of decrees, transmitted to Courts other than those which passed the same, contained in Sections 287 and 288 of Act VIII of 1859. These sections are as follows:

The copy of any decree, or of any order for execution, when filed in the Court to which it shall have been transmitted for the purpose of being executed as aforesaid, shall for such purpose have the same effect as a decree or order for execution made by such Court, and may, if the Court be the principal Civil Court of original jurisdiction in the district, be executed by such Court, or any Court subordinate thereto, to which it may entrust the execution of the same."

"When application shall be made to any Court to execute the decree of any other Court as aforesaid, the Court to which the application shall be made or referred shall proceed to execute the same according to its own rules in the like cases; provided that such Court shall have no power to inquire into the validity of the decree unless it appear from the face of the decree that the Court by which it was made had no jurisdiction to make the same.

4. On these provisions an opinion was expressed by Peacock, C.J. in *Leake v. Daniel* B.L.R. F.B.R. 970. "A question was raised in argument as to what law of limitation would apply, if the Court in which the decree was obtained, and that to which it was transmitted, were governed by different laws of limitation. It is unnecessary for us to determine what would be the law applicable to such a case; but, speaking for myself only, I would say that it appears to have been the intention of the Legislature u/s 287 that the law of limitation by which the Court to which the decree was transmitted was bound should be the law. It is a general rule that Statutes of Limitation affect the remedy, and not the law." That opinion was expressed upon a section which said that the copy transmitted should have the effect of a decree of the Court to which it was transmitted to be executed. Then turning to the provisions of the Limitation Act XIV of 1859, Sections 19 and 20, they shewed what the effect of a decree of the High Court was in point of limitation, and what the effect of a decree of another Court was. Those are the provisions of the law then in force.

5. Now we have to see what the effect of the present law is, Sections 227 and 228 of Act XIV of 1882. There is not a word about the effect of a decree in Section 227, but simply directions as to the manner of execution; and the next section goes on: "The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself." That again says nothing about the effect of any decree, but deals simply with the manner of execution, and leaves the matter of limitation to be governed by the Limitation Act. Articles 179 and 180 of the second schedule to that

Act provide what the period of limitation shall be in each of the two cases, and the difference is made to depend solely on the character of the Court which passed the decree. There is one period for decrees of High Courts and another for decrees of other Courts. The law depends not on the character of the Court which executes the decree, but of the Court which passed it, though the manner of execution is that of the Court which executes the decree.

6. Another case cited was *Ashootosh Dutt v. Doorga Churn Chatterjee* ILR Cal 504 before Mr. Justice White, in which the learned Judge held that, where a notice issued from this Court to show cause why a decree should not be executed, and after the notice an order for execution was made, that order had the effect of reviving the decree, in the same manner as in former days when a decree was revived by *scire facias*, and gave a new period of limitation. It is not necessary to discuss that question, as in this case the order, which is said to have had the effect of reviving the decree, was itself made out of time, and there is nothing to prevent a third person questioning the propriety of that order, though the parties to the suit might be precluded from doing so. I must add that if it had been necessary to consider the correctness of that decision, I should have hesitated about following it. I think it is a decision which may have to be reconsidered.

7. The result is that by the law of limitation the claim of the claimant represented by Mr. Gasper is barred, and his client is not entitled to share in the proceeds of execution.