

(1869) 01 CAL CK 0029

**Calcutta High Court****Case No:** Miscellaneous Special Appeal No. 443 of 1868

Shami Mohammed

APPELLANT

Vs

Munshi Mohammed Ali Khan

RESPONDENT

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**Date of Decision:** Jan. 29, 1869**Final Decision:** Dismissed

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**Judgement**

Norman, J.

This is an appeal from the decision of the Principal Sudder Ameen of Dinagepore, on an application by the Government, for execution in respect of a sum of Rs. 156 on account of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, recoverable by the Government u/s 309 of Act VIII of 1859. The original decree in favour of the pauper plaintiff was passed on the 31st of March 1864; that decree was affirmed by the Judge in appeal on the 26th of April 1865, and the Judge's decision was confirmed by this Court, in special appeal, on the 4th of May 1866. The Government applied for execution on the 21st April 1868, and the question which has been argued before us is whether or not the Government is barred by limitation in respect of the amount of stamp duties recoverable under the decree of the first Court in 1864, as being more than 3 years before the application for execution. The 309th section of Act VIII of 1859 provides, that "on the decision of the suit, the Court shall calculate the amount of stamps which would have been paid by the plaintiff, if he had not been permitted to sue as a pauper, and such amount shall be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable." Now it is, no doubt, clear that upon that decree of the first Court, the Government might have proceeded at once to realize the amount of stamp under the order of the Court, according to the calculation of the Court under that decree. The 360th section of Act VIII of 1859 enacts, that "a decree is to state the costs incurred in the appeal, and by what parties, and in what proportions, such costs, and the costs in the original suit, are to be paid." The decree of the Appellate Court is, therefore, to be an original decree in respect of all the costs, both of the appellate

and of the first Court; and upon that ground it appears to us that in any case a party would be entitled to a period of 3 years from the date of such decree to execute that decree in respect of costs of the lower Court, as well as the costs of the Appellate Court. In considering the right of the decree-holder, it appears to us to make no difference whether the decree expressly provides for, or in detail refers to, the costs in the lower Court, or merely incorporates the order of the lower Court as to the costs by affirming the decree. In either case the decree of the Appellate Court is " a judgment decree or order" as to such costs, within the meaning of section 20 of Act XIV of 1859, from which a new period of limitation can be computed.

2. In the case immediately before us no difficulty which might exist in ordinary cases stands in the way of the Crown. The Crown is not named in the 20th section of Act XIV of 1859, and the 17th section of that Act expressly provides that "this Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any public claims whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force." The right of the Government to the stamp fees in question is a public right. It is, therefore, clear that section 20 of Act XIV of 1859 has no application to this case. The appeal is dismissed with costs.