

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hira Lall v. Budri Dass and others, from the High Court of Judicature for the North-Western Provinces ; delivered Tuesday, March 9th, 1880.*

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Present :

SIR JAMES W. COLVILLE.  
SIR BARNES PEACOCK.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.

THE question in this case is whether the judgment creditors, who on the 14th of January 1867, obtained in the Court of the Judge at Agra a decree against the Respondents, were on the 9th of April 1874 barred by limitation from executing it. It appears that on the 3rd of December 1868 the Judge sent the decree to the Subordinate Judge of the district to be executed by him, and that on the 3rd of April 1869 the Subordinate Judge struck the execution case off the file. On 9th of April 1874 the case was re-instituted in the Court of the Judge by the petition which has given rise to the question now to be determined.

Between the 3rd April 1869, when the Subordinate Judge struck the case off his file, and the 9th April 1874, proceedings were from time to time taken by the decree holders in the Court of the Subordinate Judge to enforce the decree, but the question is whether those proceedings were sufficient to prevent the operation of the Limitation Act 14 of 1859, section 20.

Q 559. 125.—4/80. Wc. 5034. E. & S.

It appears that on the 18th February 1870 an application was made by the decree holders to the Subordinate Judge to set off a debt of Rs. 1,300, which they owed to a debtor of the Respondents, against so much of the amount due to them under the decree, and at page 6 of the record it will be found that the Subordinate Judge made an order that the application should be granted, that the decree holders should file a receipt for Rs. 1,300, and that the case should be struck off the pending file. On the 18th February 1870, therefore, the Subordinate Judge made an order by which a portion of the debt, to the extent of Rs. 1,300, was satisfied. Subsequently on the 8th of January 1872 an application was made to the Subordinate Judge to send a certificate of the decree to the political agency at Indore in order that the decree might be executed there, whereupon he made an order that the Judge should be requested to send the record of the execution of decree ; but inasmuch as an interval of more than one year had elapsed since the last order it was necessary, under section 216 of Act 8 of 1859, to serve the judgment debtors with a notice, in order that they might, if they could, show cause why the decree should not be executed against them. Accordingly a notice was sent to them in a registered cover by post, they living out of the jurisdiction of the Court, but it was returned, as the judgment debtors were not found. That was on the 2nd April 1872. The Subordinate Judge held that that was not a sufficient service upon the Defendants, and ordered the case to be struck off the file of pending cases. On the 3rd May 1872 he made an order: "That a notice be sent to the judgment debtors by post in a registered cover, fixing the 18th day of May as the date for showing cause, and that the case be brought forward on the said date." On the

30th May 1872, the Nazir of the Court made the following report: "In this case a notice in a registered cover was sent by post to the judgment debtors. The cover has been returned to-day by the post, open. The cover has a slip attached thereon, in which it is written, in Hindi, that Buddri Nauth, treasurer (that is one of the judgment debtors), refuses to take it. Therefore, the cover in question is submitted, with this petition." On the 3rd June 1872, the case again came before the Subordinate Judge, upon which he made the following order: "The case having been brought forward, it appears that a notice in a registered cover was sent by post to the judgment debtor at Indore, but, the judgment debtors not having received the cover, it was returned. The judgment debtors not having taken the cover containing the notice, it must be considered as having been served." It is therefore ordered: "That a report be endorsed on the decree, and made over to the decree holders' pleader, that he may sue out execution in a competent court, and recover the amount of his decree, and that the case be struck off the pending file."

Afterwards, on the 24th December 1873, upon a report of the Mohurrer that the record was not in the office, the Subordinate Judge made another order that the record should be sent for from the Judges' Court. Subsequently, on the 9th January 1874, in a proceeding from which it appears that the record had been received and perused, the Subordinate Judge "ordered that the certificate prescribed by sections 285 and 286, Act 8, 1859, and copy of the application for execution of decree, be sent to the agent at the Indore Cantonment." On the 9th April 1874 the case was re-instituted in the Court of the Judge by petition, stating that the Subordinate Judge

had not lost control of the case until 3rd June 1872, that the decree holders had a certificate on which they had not acted and they prayed the Court that under section 237 certain 4 per cent. promissory notes for Rs. 25,000 due to the judgment debtors in the Indore Agency Cantonment Treasury might be attached. It appears that after some demur on the part of the Assistant Political Agent to execute the decree, he was ordered to execute it; and he did execute it by attaching a sum of Rs. 13,097, belonging to the judgment debtors, and that money was sent to the Judge at Agra by means of a bill. On the 13th May 1876, the Judge, having received the money from the Indore Agency, ordered that the Rs. 13,097-7-9 be given over to Meer Jaffar Hosen, pleader for the decree holder, agreeably to a power given to him, and a receipt be taken from him. Before the money was handed over, however, an application was made to the Judge, which will be found at page 30 of the record, in which the Defendants made the following objection, amongst others: "1. That the decree holders decree is beyond time." Thereupon the Judge on the 18th May 1876 made the following order: "The objections are such as may be entertained, and may possibly be determined in favour of the debtors. It appears, therefore, undesirable that the decree holder should get the money till they have been disposed of. Let payment be stayed on the debtors giving security to pay interest at eight annas per mensem per cent., in the event of the money being ultimately awarded. If the cheque received from foreign territory have been already made over to the decree holder, an injunction may be issued to the bank on which it is drawn, not to cash it till further orders." Then comes the decision of the 31st May 1876, by which the Judge held that the proceedings in the Court of the Sub-

ordinate Judge were *ultra vires*, and did not prevent the running of limitation. He held that the transfer of the case to the Subordinate Judge was not authorised by law, and that when the Subordinate Judge removed the case from his files he could not take it up again without a fresh transfer. He also considered that the decree holders had not shown due diligence in the case and doubted whether any of the proceedings were *bonâ fide*. He, therefore, held that he was constrained to grant the prayer of the objectors, and to award them costs.

The execution creditors appealed to the High Court, and that Court upheld the decision. The Judges, however, stated that they saw no reason to think that the Appellants had not exerted themselves *bonâ fide* to obtain their due. In that view their Lordships concur. But the High Court considered that the transfer to the Subordinate Judge, even if the Judge had power to make it, merely authorised him to take up and dispose of the application then pending and not the subsequent applications which were made to him. They further stated that they affirmed the order of the Judge with great reluctance.

There can be no doubt that the applications to and orders of the Subordinate Judge if he had had jurisdiction would have been sufficient to prevent the operation of the Statute of Limitations, and their Lordships are of opinion that, under the circumstances of the case, they had that effect, even if he had no jurisdiction. Section 14 of Act 14 of 1859 enacts: "In  
 " computing any period of limitation prescribed  
 " by this Act the time during which the claimant,  
 " or any person under whom he claims, shall have  
 " been engaged in prosecuting a suit upon the  
 " same cause of action against the same Defen-  
 " dant or some person whom he represents *bonâ*  
 " *fide*, and with due diligence, in any Court of

“ Judicature, which, from defect of jurisdiction  
 “ or other cause, shall have been unable to decide  
 “ upon it, or shall have passed a decision which  
 “ on appeal shall have been annulled, for any  
 “ such cause, including the time during which  
 “ such appeal, if any, has been pending, shall be  
 “ excluded from any such computation.” It  
 was, therefore, the object of the Legislature,  
 at least with regard to the limitation for the  
 commencement of a suit, to exclude the time  
 during which a party to the suit may have been  
 litigating *boná fide* and with due diligence before  
 a Judge whom he may suppose to have had  
 jurisdiction, but who yet may not have had  
 jurisdiction. The question is, whether the same  
 principle may not be applied to the construction  
 of section 20 of Act 14 of 1859, with regard to  
 executions. Section 20 says: “ No process of  
 “ execution shall issue from any Court not esta-  
 “ blished by Royal Charter to enforce any  
 “ judgment decree or order of such Court unless  
 “ some proceeding shall have been taken to  
 “ enforce such judgment decree or order, or to  
 “ keep the same in force, within three years next  
 “ preceding the application for such execution.”  
 The Act does not say some proceeding in a Court  
 having jurisdiction, and their Lordships are of  
 opinion that a proceeding taken *boná fide* and  
 with due diligence before a Judge whom the  
 party *boná fide* believes, though erroneously, to  
 have jurisdiction, especially when the Judge  
 himself also supposes that he has jurisdiction,  
 and deals with the case accordingly, is a pro-  
 ceeding to enforce the decree within the meaning  
 of section 20.

In this case the Subordinate Judge did believe  
 he had jurisdiction. Applications were made to  
 him, and he made orders which would, if he had  
 had jurisdiction, have been proceedings within  
 the period of limitation. If the judgment

debtors had appeared before the Subordinate Judge, and had objected to his jurisdiction, he must have decided whether he had jurisdiction or not; and if he had decided that he had jurisdiction, even though he had not, the proceedings would have been proceedings within the meaning of section 20. They ought equally to be so, though the judgment debtors did not appear or object to the jurisdiction.

There is one case which should be referred to, and that is the case of *Roy Dlumput Singh v. Mudhomatec Dabia*, reported in the 11th Bengal Law Reports, page 23. There, "An execution sale  
 " was stayed by consent for two months, and  
 " the execution suit was struck off the file.  
 " During that period the execution creditor  
 " applied to the Court to restore the execution  
 " suit, and to pay to him certain moneys in  
 " deposit in Court to the credit of the judgment  
 " debtor in another suit, alleging that he (the  
 " executing creditor) had attached them; but it  
 " turned out that he had attached them in  
 " another suit. Held,—the application being  
 " *bond fide*, that the period of limitation began to  
 " run from the date of the disposal of the appli-  
 " cation by the Court." In delivering their  
 judgment at page 31, the Judicial Committee  
 said: "It is said that this proceeding cannot  
 " be held to be one to keep the judgment in  
 " force, because it was a petition to obtain  
 " execution of a sum of money which it  
 " was not possible that the execution could  
 " reach, and that that must have been so to the  
 " knowledge of the decree holder. It seems to  
 " their Lordships that these circumstances really  
 " affect only the *bond fides* of the proceedings.  
 " If their Lordships could infer from these facts  
 " that the petition was a colourable one, not  
 " really with a view to obtain the money; if  
 " they could come to that conclusion, in point

“ of fact the proceeding would not be one contemplated by the Statute; but their Lordships cannot come to that conclusion.” They therefore came to the conclusion that the proceeding, although abortive, was a proceeding within the meaning of the 20th section of Act 14 of 1859.

On the whole, therefore, their Lordships have arrived at the conclusion, and will humbly advise Her Majesty, that the decree of the High Court was erroneous, and that it be reversed; that in lieu thereof an order be made reversing the order of the Judge of Agra of the 31st May 1876, and ordering that the Rs. 13097.7.9, with such interest as they may be entitled to under the order of the 18th May 1876 be paid to the decree holder; and that the Appellants have the costs in all the Lower Courts subsequent to the petition of objection of the 18th May 1876, and the costs of this Appeal.

4