Present: The Hon. Mr. A. G. Lascelles, Acting Chief Justice, and Mr. Justice Wendt.

1906. *June* 12.

RAMEN CHETTY *v.* FREDERICK APPUHAMI.

D. C., Colombo, 22,461.

Action on a decree—Disallowance of application for writ—Res judicata—Civil Procedure Code, ss. 217, 223, *and* 337.

It is not open to a person who has obtained a decree of a competent Court to maintain a separate action on such decree. The only course open to such person is to enforce the decree in manner provided by the Civil Procedure Code.

Tambi Marikar Wappu Marikar v. Nainama Nachia (1 *Bal.* 160) disapproved.

IN September, 1899, the plaintiff obtained a decree against the defendant for Rs. 7,410.14 in case No. 12,955, D. C., Colombo. Writ was issued, but it was returned unexecuted. The plaintiff

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on the 1st September, 1905, made an application for reissue of writ, but the application was disallowed on the ground that the plaintiff had not used due diligence on the last preceding application to procure complete satisfaction of the decree. The plaintiff did not appeal against this order, but instituted the present action on the original decree. The District Judge (J. R. Weinman, Esq.) dismissed the action, holding that the refusal to reissue execution in the previous action (No. 12,955) was a bar to the present action. The plaintiff appealed.

F. M. de Saram, for plaintiff, appellant.—It has been held by this Court that an action of this sort is maintainable. The case reported in 1 *Bal.* 106 is exactly in point. In cases reported in 8 *S. C. C.* 100 and 2 *C. L. R.* 208 it has been held that assignees of decrees could sue on their decrees. Now, assignees cannot have any greater rights than their assignors had. It therefore follows that their assignors, that is to say judgment-creditors, could sue on their decrees. The provisions of the Civil Procedure Code have not altered the common law rights of an individual to institute an action on a decree. The Code merely enacts the procedure to be followed in executing a decree. Under section 337 of the Code a judgment is prescribed in ten years, and section 347 of the Code requires notice to be issued to the judgment-debtor, where application for execution is made after the lapse of one year between the date of decree and the application for its execution. The judgment creates a debt, for non-payment of which an action can be brought on it.

Walter Pereira, K.C. (*Samarawickreme* with him), for defendant, respondent.—The effect of allowing an action of this sort will be to nullify all the provisions made in the Code to prevent judgment-debtors being unnecessarily harassed. It has been held in India that in Courts regulated by the Civil Procedure Code the only way in which a decree could be enforced is in the manner provided for by the Code, and not by action on the decree. The cases in point are collected and cited with approval in 8 *Bombay* 1. The Privy Council has taken the same view (26 *W. R.* 82). The cases reported in 8 *S. C. C.* 100 and 11 *C. L. R.* 208 are distinguishable, but all that need be said here is that this point was not raised or considered in those cases.

De Saram in reply.

Cur. adv. vult.

12th June, 1906. LASCELLES A.C.J.—

This is an appeal from a decision of the District Judge of Colombo that it was not competent for a decree-holder to bring an action upon the decree to enforce his debt.

The plaintiff in action No. 12,955 obtained judgment for Rs. 7,410.14 on the 21st September, 1899. Writ was issued on the 29th September and subsequently reissued several times.

Finally, on the 1st September, 1905, an application to reissue execution was disallowed on the ground that the Court was not satisfied that due diligence was used on the last preceding application to procure satisfaction of the decree. The plaintiff now brings his action upon the decree. The present appeal is from the dismissal of the action by the District Judge.

The general principles on which actions may be brought to enforce judgments are clearly stated by Latham J. in *Merwanji Nowroji v. Ashabai* (1): " There is no doubt of the general principle, as laid down in *Williams v. Jones* (2) by Parke B., whose words were adopted by Blackburn J. in *Godard v. Gray* (3) that ' where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum on which an action of debt to enforce the judgment may be maintained.' The same principle is recognized by the Civil Law where the action founded on the prior judgment is known as the *actio judicati.*"

It may be added that actions of debt upon judgment are not favoured by the English Courts, " being for the most part odious and oppressive *Biddleson v. Whitel* (4) ".

In support of the decision of the District Judge we have been referred to a decision of the Indian Courts to the effect that the provisions of the Indian Procedure Code preclude judgments of Courts regulated by that Code from being enforced by separate action; and it is urged that our Code of Civil Procedure being based on that of India, the same principle should be followed here. The Indian authorities for this proposition are cited with approval in *Merwanji Nowroji v. Ashabai* (5); and in *Mirza Mahomed Aga Ali Khan Bahadoor v. the widow of Balmakund and others* (6) the Privy Council seem to agree that the proper mode of enforcing a decree is that pointed out by the Code of Civil Procedure.

The question which has to be considered is whether by the Ceylon Code of Civil Procedure the Legislature has indicated an intention that decrees shall be enforced only in the manner indicated by the Code and not by action on the decree.

The only local authority cited to us is the case of *Tambi Marikar Wappu Marikar v. Nainama Natchiya* (7), where Grenier J. held,

(1) (1883) *I. L. R.* 8 *Bom.* 1.
(2) 13 *M. & W.* 633.
(3) *L. R.* 6 *Q. B.* 140.
(4) *Sir W. Blackstone's Reports, vol.* 1, *p.* 500
(5) (1883) *I. L. R.* 8 *Bom.* 1.
(6) (1876) 26 *W. R.* 82.
(7) (1904) 1 *Bal.* 106.

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in circumstances resembling those of the present case, that an action might be brought on the decree. But there is nothing in the report to show that the Indian cases were brought to the notice of the learned Judge.

Section 217 of the Civil Procedure Code, after dividing decrees into several classes, proceeds as follows: "And the method of procedure to be followed, when necessary, by . . . . . the decree-holder on judgment-creditor is that which is next hereinafter specified according to each of the above distinguishing heads." The Code, in the following sections, then sets out the means by which decree-holders may enforce decrees according to their classification.

The language of this section, I think, indicates an intention that the methods of procedure which are subsequently enumerated are intended to be exhaustive, and that recourse to other remedies is not open to the decree-holder. Section 337 sets out the conditions subject to which execution may be reissued, namely, that the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction or that execution was stayed at the request of the judgment-debtor. These conditions do not appear in the corresponding section 230 of the Indian Code. The section further prescribes a time limit beyond which execution will not be allowed. This follows the lines of the Indian Code.

The object of the stringent provision 337 is obviously to prevent judgment-debtors from being unnecessarily harassed by legal proceedings. This purpose would be wholly defeated if it were open to a decree-holder, after his application to reissue execution had been disallowed under section 337, to institute a fresh action upon the decree and embark again upon the course of worrying his debtor.

I think that the intention is expressed in our Code, at least as clearly as in the Indian Code, that decree-holders shall be restricted to the very ample means which the Code provides for the enforcement of their decrees. I would affirm the judgment of the District Judge, but in the circumstances of the case I would allow the decree-holder to renew his application for execution.

WENDT J.—

The right to bring an action upon a judgment is recognized by our Common Law, and the question is whether that right has been taken away by the Civil Procedure Code. No case has been cited to us in which an action founded upon a judgment has been held, since the enactment of the Code, to be maintainable. The case of *Weerawagoe v. Fernando* (1) was an action upon the assignment of a decree, and was brought in consequence of the Court's refusal to

(1) (1893) 2 *C.L.R.* 207.

substitute the assignee upon the record of the original action in the room of the assignor. In India it has been held that in consequence of the provisions of their Procedure Code, no new action is maintainable, and I am of opinion that similarly there are provisions in our Code which indicate that, in the case of a decree enforceable by due execution under that Code, no new action is competent. The whole policy of our Code is that once a cause of action has been made the subject of a claim in Court, that claim must finally be adjudicated upon in that proceeding, unless special leave be given to withdraw; and similarly, when once a decree has been obtained it must be promptly followed up with a view to satisfaction being obtained by execution in the same proceeding. Section 217, after classifying decrees under several heads, enacts that "the method of procedure to be followed, when necessary, by the person party to the action in whose favour the decree or order is made, in order to enforce satisfaction or execution of his decree in each case respectively by the person party to the action against whom the decree is made, is that which is next hereinafter specified according to the above distinguishing heads." Then follow detailed directions for execution of (head A) "Decrees to pay money," and section 218 enumerates the powers of the decree-holder, viz., to seize and to sell or realize in money by the hands of the Fiscal, except as in that section excepted, all saleable property of the judgment-debtor; and (see 223) the Fiscal must be put in motion by application for execution of the decree to the Court which made the decree. There is no section which could be read as recognizing the possibility of an action on a judgment, and I have come to the conclusion that the Legislature intended to prevent such a thing.

Besides holding that no action lay, the learned District Judge has also held that the refusal of further execution in the original proceedings operated as *res judicata* against plaintiff. But that refusal was made *ex parte* and on the ground that plaintiff had not shown that he had, after the previous issue of execution, exercised due diligence to obtain complete satisfaction. I think the order was not final in its nature, and looking to the merits so far as they have been disclosed in the record, I consider it only fair that plaintiff should have the right to renew his application for execution.

I therefore concur in the order proposed by my Lord.