

A PPEAL from an order of the Commissioner of Requests, Kegalla.

C. V. Ranawake, for plaintiff, appellant.

July 1, 1930. JAYEWARDENE A.J.—

The plaintiff obtained a decree on June 18, 1919, against the defendant on a mortgage bond for Rs. 100·57, and costs. After various steps in execution the plaintiff moved for the re-issue of writ on February 7, 1929. The defendant objected to the issue of writ on the ground that the application was barred by prescription, ten years having elapsed since the date of the decree and also that the plaintiff had not exercised due diligence. The learned District Judge has rejected the application on the first ground, that it was barred by lapse of time under section 337 of the Civil Procedure Code. The application itself was made within ten years, but the order of the Judge was after the lapse of ten years from the date of the decree. The Judge held that under section 337 the date of granting and not the date of application had to be taken into account. The question was considered in *Vipaya Sethurayar v. Annasarui Ayyar*,¹ and it was held that the limitation was intended to apply to the application and not to the order passed thereon, and that the words prescribing the limitation are to be referred to the words "application to execute the decree" and not to the word "granted".

1930

Present : Jayewardene A.J.

KIRIBANDA v. LEBBE AMINE.

50—*C. R. Kegalla*, 16,025.

Writ—Application for re-issue—Period of limitation—Application of time-limit—Civil Procedure Code, s. 337.

Where application for re-issue of writ was made under section 337 of the Civil Procedure Code within ten years of the decree, but the order granting the application was made after the expiration of the period,—

Held, that the application was within time.

¹ (1919) 21 *N. L. R.* 114.

² (1907) 10 *N. L. R.* 347.

If the application for execution is made within ten years of the date of the decree, the order on the application may be made after the expiry of ten years. It may otherwise happen that delay on the part of the Court, perhaps unavoidable, may deprive a decree-holder of the benefit of the decree without any fault on his part. The learned Judge has not held that there was lack of due diligence. I would therefore set aside the order of the learned District Judge and allow the appeal. Owing to the long delay I would

¹ (1883) 6 *Mad.* 361.

make no order as to costs of the lower Court, but the plaintiff is entitled to the costs of the appeal.

Appeal allowed.
