

**(1898) 05 AHC CK 0001**  
**In the Allahabad High Court**

Onkar Singh and Another

APPELLANT

Vs

Mohan Kuar

RESPONDENT

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**Date of Decision :** 12-05-1898

**Acts Referred:**

**Citation :** (1898) ILR (All) 428

**Hon'ble Judges :** Dillon, J;Burkitt, J

**Bench :** Division Bench

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## Judgement

Burkitt and Dillon, JJ.—This is a case of an execution of a decree for money. The original judgment-debtor died since the decree, and his sons have been brought on the record as his representatives. During the course of the execution proceedings the sons, on the 29th of May 1897, raised an objection to the execution to the effect inter alia that the property had not been properly attached during the life-time of their father, the original judgment-debtor. A date was fixed for hearing that objection, but neither the representatives of the judgment-debtor nor the execution creditor appeared. No steps whatever were taken to hear and decide the objections, and they were struck off. Shortly afterwards, the property being ancestral, the case was transferred to the Collector for execution under the rules framed in pursuance of Section 320 of the Code of Civil Procedure. The execution application was struck off the file of the Subordinate Judge on the 9th of July, 1897. On the 20th of the same month the representatives of the deceased judgment-debtor again raised the same objection before the Subordinate Judge to the execution of the decree. On these objections the Subordinate Judge recorded an order to the effect that the case had been transferred for execution to the Collector, and that the Collector would issue a notice u/s 322A and that thereupon any person who had any objection to take in respect of the property advertised for sale could take that objection. Now in making this order the Subordinate Judge was wrong throughout, and it is so admitted by the learned advocate who appears for the decree-holder respondent. The Collector u/s 322A is not authorized to hear any objection, by parties interested in the property advertised for sale, to the sale of that property. When

a money decree is transferred to the Collector for execution by sale of certain property, that property is usually attached before the decree is sent to the Collector, and the Collector may then, u/s 322A, call on all persons holding money claims against the judgment-debtor to come in and prove their claims, so as to enable the Collector to make arrangements to avoid if possible the sale of the attached property. It is no part of the Collector's duty u/s 322A to decide whether the property has or has not been properly attached. That is the duty of the Court to which the application for execution is made and which transmits the decree to the Collector. But the learned advocate for the decree-holder attempted to support the order of the Subordinate Judge on another ground referring to the proceedings taken on the objection of the 29th of May 1897. His contention was that the representatives of the deceased judgment-debtor having taken their objection and having failed to prosecute it could not be further heard on the same ground. In our opinion this contention is not sound and is disposed of under the ruling in the case of *Dhonkal Singh v. Phakkar Singh* ILR All. 84, in which it was distinctly laid down that where an application for execution has been simply struck off without any order adverse to the right on the merits, that application might be renewed again and again till judicially decided adversely to the applicant. The same principle applies to an objection raised by a judgment-debtor to the execution of the decree. We do not think that the fact that between the application of the 29th of May 1897, and the 20th of July 1897, execution was transferred to the Collector is in any way material here. We allow this appeal. We set aside the order of the Subordinate Judge, and we direct him now to take up and judicially determine the objections taken by the representatives of the deceased judgment-debtor on the 20th of July 1897. The appellants are entitled to their costs.