

# [Mode the same character in both the](https://assignbuster.com/mode-the-same-character-in-both-the/)

Mode of execution.—Where applications are made to a court for the execution of cross-decrees in separate suits for the payments of two sums of money passed between the same parties and capable of execution at the same time by such court, then— (a) If the two sums are equal, satisfaction shall be entered upon both decrees; and (b) If the two sums are unequal, execution may be taken out only by the holder of the decree for the large sum and for so much only as remains after deducting the smaller sum and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction of the decree for the smaller sum. The rule shall not be deemed to apply unless— (i) The decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and the each party fills the same character in both the suits; and (ii) The sums due under the decree are definite. The above rule shall, however, apply whether either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons. Illustration: A, B, D and E are jointly and severally liable for Rs. 1, 000/- under a decree obtained by F.

A obtains a decree of Rs. 100/- against F singly and applies for execution to the court in which the joint-decree is being executed. F may treat his joint decree as a cross-decree under this rule. (O.

21, R. 18). In order to apply the above rule to cross-decrees it is necessary that the following conditions must be fulfilled: 1. The cross-decrees must be for the payment of two sums of money. 2. The decrees must have been obtained in separate suits; 3. Both the decrees must be capable of execution at the same time; 4.

The decree-holder in one of the suits in which the decrees have been passed should be the judgment-debtor in the other and each party fills same character in both suits; and 5. Both the decrees must be before the execution court for execution and application should have been made for execution of both of them. The provisions relating to cross-decrees for the payment of money also apply to decree for sale in enforcement of a mortgage or charge.