

## ORIGINAL CIVIL.

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*Before Lord-Williams J.*

KEDARNATH BHUTRA

v.

JOHORMULL BHUTRA\*

1929

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April 28.

*Practice—Costs—Consent decree, its effect on interlocutory orders for costs—Practice of the Calcutta High Court, Original Side—English practice.*

A final decree should specifically state that all previous interlocutory orders for costs were thereby superseded, if that were the intention of the parties. And where the decree is a consent decree, it should be stated that the parties had agreed to abandon the rights as to costs which had already accrued to them under the previous orders of the Court.

*Beynon & Co. v. Godden & Son* (1) and *British Natural Premium Provident Association v. Bywater* (2) followed.

*Crofton v. Hayes* (3) dissented from.

*Obiter.* According to English practice, in the case of orders for costs made by the Court of appeal during the progress of the suit, such orders for costs may be taxed forthwith and execution levied therefor. This practice should be followed in this Court.

## APPLICATION in a suit.

The facts out of which this application arose are as follows: This suit was instituted by the plaintiff for an enquiry, as to what was the joint estate of his father, Hiralal Bhutra, and of the defendant, Johormull Bhutra, at the time of the death of the said Hiralal Bhutra, for a declaration of the plaintiff's share in the said joint estate and other incidental relief. The suit came on for hearing on the 24th day of January, 1927, when terms of settlement were put in. Subsequently the defendant applied for an order setting aside the consent decree, on the ground that the same was without his knowledge and consent. This application was dismissed on the 2nd

\*Application in Original Civil Suit, No. 1180 of 1925.

(1) (1878) 4 Ex. Div. 246.

(2) [1897] 2 Ch. 531.

(3) (1891) Court Minute Book of  
Mr. Justice Wilson, dated  
the 19th Jan.

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March, 1927. An appeal was preferred against this dismissal. On the 5th July, 1927, the appeal court allowed the appeal, but directed the defendant to pay the costs of the application and of the appeal. The plaintiff lodged his bill of costs and had the same passed on the 3rd September, 1927. The defendant filed an exception on the 12th September, 1927. The Taxing Officer did not entertain the exceptions, as these were lodged out of time. In the meantime the plaintiff applied for execution of his taxed bill of costs. This execution proceeding was stayed on the 23rd November, 1927, and the defendant was ordered to pay a sum of Rs. 1,440-7-6 and furnish security for the sum of Rs. 2,017 and the Taxing Officer was directed to report whether the application for review was filed within time. The Taxing Officer gave his report on the 8th day of June, 1928. The suit again came up for hearing before Mr. Justice Dwarka Nath Mitter on the 17th of November, 1927, and terms of settlement were put in which *inter alia* provided that each party should pay its own costs to be taxed, if necessary, by the Taxing Officer as between attorney and client on scale No. II. Besides the said taxed bill of costs under orders dated 15th June and 5th July, 1927, there was another order dated 8th August, 1926, for amendment of the written statement and the bill of costs for the same was taxed by a separate bill of costs. Then on the 30th April, 1929, the present application was made on behalf of the defendant Johormull Bhutra for an order to restrain the plaintiff and his attorneys from executing or attempting to execute any allocatur that had been issued by this Court under any interlocutory order made in this suit prior to 17th of November, 1927, or in any appeal against any such order and in particular to restrain the plaintiff from executing the allocatur obtained under the order made in this suit dated the 15th of June, 1927, and 8th of August, 1927, and also the order dated the 5th of July, 1927, made in the appeal preferred against the order made on the 2nd March, 1927.

*Mr. W. Gregory and Mr. N. N. Bose, for the defendant applicant.*

*Mr. S. C. Roy and Mr. J. C. Sett, for the plaintiff.*

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LOFT-WILLIAMS J. In this case, a decree was made by consent, one of its terms being that each party should pay its own costs to be taxed by the Taxing Officer of this Court if necessary as between attorney and client on scale No. II.

Mr. Gregory argues that the effect of the decree is to supersede all interlocutory orders for costs which have previously been made in the suit. These interlocutory orders include orders which have been made by the Court of appeal. He bases that argument on two decisions of Mr. Justice Wilson in 1891 and 1892 and says that the practice of this Court has been in accordance with these decisions. I doubt whether the decisions are sufficient in their terms to support the rule which Mr. Belchambers based upon them in those days, which rule, I am informed has been followed hitherto in this Court. Such a rule would not be in accordance with English practice on this point and in my opinion the rule as minuted by Mr. Belchambers is not a correct rule or one which should be followed. If it is intended to supersede previous interlocutory orders for costs that fact should be stated specifically in the final decree. In the case of a consent decree it should be stated specifically as one of the terms of the agreement to which the parties have come, *i.e.*, it should be stated that they had agreed to abandon the rights which had already accrued to them under the previous orders of the Court. It is worthy of note, that according to the English practice, and I believe also the practice which does or ought to obtain in this Court in the case of orders for costs made by the Court of appeal during the progress of the suit, such orders for costs may be taxed forthwith and execution levied therefor. They are distinguished in this way from interlocutory orders made in the original Court, which according to the practice both here and in England

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must await taxation at the final termination of the suit. There is very little authority to assist one in coming to a conclusion on this matter but my decision is based to some extent upon the case of *Beynon & Co. v. Godden & Son* (1) and *British Natural Premium Provident Association v. Bywater* (2).

The result is that this application is dismissed with costs.

*Application refused.*

Attorneys for the plaintiff: *K. K. Dutt & Co.*

Attorney for the defendant: *S. K. Dutt.*

O. U. A.

(1) (1878) 4 Ex. Div. 246.

(2) [1897] 2 Ch. 531.