

property, we should have what we think would be the deplorable spectacle of an agent who had been sued by the principal but had succeeded in defeating that suit, although the matter was still in appeal before a higher Court, obtaining execution for costs, availing himself of the process of execution to acquire, by improper means, the property of his principal for his own benefit at an absolutely inadequate price. Beyond the general objection to allowing such conduct as this to succeed, those parts of this man's examination, which have been read to us, furnish reason for thinking that on other grounds also he is not deserving of the aid of the Court to obtain an advantage over the lady, who was his principal. It is not necessary to go further into that question now, as the matter will be fully discussed on the appeal, which is pending. It appears to us that the Court below having before it the parties to the suit, was bound to restrain one of them from getting the advantage which he sought to take of the other. We think the sale should be set aside, and the property should continue under attachment so as to abide the result of the appeal.

1879

RUKHINIE
BULLUBEH
v.
BROJONATH
SINGAR.

Appeal allowed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Prinsep.

SONAKA CHOWDRAIN (DEFENDANT) v. BHOOBUNJOY SHAHA AND OTHERS (PLAINTIFFS).*

1879
May 15.

Insufficiency of Stamp—Penalty—Decision as to, not appealable as a Decree—Civil Procedure Code (Act VIII of 1859), s. 365—Act X of 1877, s. 588.

A decision of a Judge directing a penalty to be enforced under the Stamp Act, the case being afterwards proceeded with, is not appealable as a decree, as it cannot be said to be a decree affecting the merits of the case or the jurisdiction of the Court.

Nor can such a decision be said to be "an order as to a fine" within the meaning of s. 365 of Act VIII of 1859 (with which s. 588 of Act X of 1877, cl. 29, corresponds).

Section 365 is not intended to apply to penalties under the Stamp Act, but only to fines which may be levied under the Code itself.

* Appeal from Original Decree, No. 70 of 1878, against the decree of F. McLaughlin, Esq., Officiating Judge of Zilla Neakhally, dated the 17th of January 1878.

1878

SONAKA
CHOWDRAIN
v.
BHOOBUNJOY
SHAH.

THIS was a suit brought to recover the amount of certain instalments due on a bond payable by instalments extending over twenty-two years.

The plaintiffs stated that, in 1278 (1872), the defendant borrowed from them the sum of Rs. 30,000; and that, in Bhadro 1281 (August 1874), they entered into a bond, in which certain properties were given as security, for securing the repayment to themselves of the sum of Rs. 76,000. The bond recited the loan, that the interest due thereon amounted to Rs. 46,000, and that principal and interest amounted to Rs. 76,000, and it contained a covenant on the part of the defendant to pay this amount by instalments, together with interest.

The defendant failed to pay the instalments due for the years 1281, 1282, and 1283 (1874—1876), and the plaintiffs brought this suit to recover the instalments due with interest.

The defendant took several objections to the suit, amongst which was one, stating that the bond was given to secure Rs. 76,000, but the stamp on the bond was only of sufficient value to cover a bond of the value of Rs. 30,000.

The Judge allowed the objection, stating, however, that he was satisfied that the plaintiffs had not attempted to evade the stamp-duties, as the local Sub-Registrar had advised them that the proper stamp for the bond was a stamp of the value of Rs. 100; he, therefore, under s. 20 of the Stamp Act, ordered the plaintiffs to pay the deficiency, *viz.*, Rs. 68, and ordered him to pay a penalty of Rs. 1,000; the penalty was paid, and, on the case being proceeded with, the plaintiffs obtained a decree against the mortgaged property for the amount claimed.

The defendant appealed to the High Court on the merits, and the plaintiffs filed a cross-appeal, on the ground that the lower Court was wrong in holding that the bond required a stamp upon Rs. 76,000, and in directing the payment of Rs. 1,000 as a penalty.

Baboo *Kali Mohun Dass* and Baboo *Kashi Kant Sen* for the appellants.

Baboo *Srinath Dass* and Baboo *Jadub Chunder Seal* for the respondent.

The judgment of the Court was delivered by

GARTH, C. J. (PRINSEP, J., concurring), who, after dismissing the defendant's appeal, gave the following judgment on the plaintiffs' cross-appeal:—We have now considered the cross-objection made by the respondents (the plaintiffs) upon the ground that the Judge improperly compelled them to pay an additional sum for stamp-duty on the bond, and also a penalty of Rs. 1,000.

The loan in respect of which the bond was given was Rs. 30,000, but that sum was made repayable with interest by certain instalments, extending over twenty-two years. Thus the whole amount secured by the bond, principal and interest, was Rs. 76,000.

Although that sum of Rs. 76,000 consisted, no doubt, partly of interest and partly of principal, still, having regard to the nature of the transaction and to the fact, that in case of nonpayment of any instalment, *interest would be payable on that instalment*, the Judge considered that the bond should have been stamped for Rs. 76,000.

It was, however, under the advice of the Sub-Registrar that the bond was stamped for Rs. 30,000, and, therefore, there was clearly no intention of evading the law. So the Judge allowed the additional stamp to be affixed, the plaintiffs paying a penalty of Rs. 1,000.

The stamp was affixed, and the penalty paid; but under protest by the plaintiffs, who appear to have been under the impression that the decision of the Judge was one which they could question in this Court upon appeal.

The decision, however, is not appealable as a decree, because it is not a decree in any sense, and even if it were one, it would be a decree not affecting the merits of the case, or the jurisdiction of the Court (see Act VIII of 1859, s. 363).

But then it was argued that it is *an order as to a fine* within the meaning of s. 365 of Act VIII of 1859. That section says, that "all orders *as to fines* or the levying thereof, &c., shall be subject to appeal."

But we think that s. 365 is not intended to apply to penalties

1879

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SHAKA.

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SHARMA.

under the Stamp Act. The fines to which it does apply are those which may be levied under the Code itself.

The penalty, which has been imposed upon the plaintiffs, could not be enforced by levy or in any other way. The only effect of the plaintiffs not paying it, would have been that the bond could not have been admitted in evidence.

There is no doubt that, if the plaintiffs had refused to pay the penalty, and the bond had consequently been rejected, the plaintiffs, if the Judge was wrong, might have appealed to this Court, upon the ground that he had committed an error of law in refusing to receive the document in evidence; and it certainly seems rather hard that, because the plaintiffs submitted to the judgment of the Court and paid the penalty, they should be without redress in a Court of appeal.

But such is the law, as we read it, and we consider that the only remedy which the plaintiffs have is to apply to the Revenue Board. We have had the opinion of that Board read to us. It seems to be of opinion, that the bond was properly stamped in the first instance, and if that is so, there is no reason why the plaintiffs should not obtain from the Board the relief which we cannot give them here.

Any opinion of ours as to what is the proper stamp would of course be extra-judicial, because, for the reasons which we have already given, we think we have no right to entertain the question at all.

The cross-objection is, therefore, disallowed.

Cross-appeal disallowed.

Before Mr. Justice Jackson and Mr. Justice McDonell.

1879

April 23.

GOLAP CHAND NOWLUCKHA (PLAINTIFF) v. KRISHTO CHUNDER DASS BISWAS (DEFENDANT).*

Limitation—Beng. Act VIII of 1869, s. 30—Act IX of 1871, s. 6—Act XV of 1877, ss. 5 and 6.

Although a suit to recover moneys or obtain papers or accounts from an agent, must, under s. 30 of Beng. Act VIII of 1869, be instituted within

* Appeal from Appellate Decree, No. 1867 of 1878, against the decree of A. J. R. Bainbridge, Esq., Judge of Moorsshedabad, dated the 1st August 1878, affirming the decree of Baboo Grish Chunder Chatterjee, First Munsif of Berhampore, dated the 2nd February 1878.