GURUSAMI v. SUBBARAYA.

any improper motive. The only fact referred to by the Judge is that the consideration for document A was Rs. 30, whilst the price of the land is at present Rs. 200. The present price of a moiety would be Rs. 100 and a deduction must be made from it on account of the land reserved for the vendor. But in deciding whether the transaction was *bonâ fide* or otherwise with reference to inadequacy of price, regard should be had to the state of things as it might have appeared to the contracting parties at the time when the transaction was entered into; for, even a *bonâ fide* purchaser who takes upon himself the risk of litigation and consents to lose what he pays in a specified event, would ordinarily hesitate to pay the price which the property would fetch when the litigation proves successful. We are unable to concur in the opinion of the Judge that the transaction is champertous because the respondent No. 1 accepted an inadequate price on account of his need, and we shall therefore ask him to return a finding on the first issue, and, if it is in the affirmative, also to return findings upon the evidence on record on the other questions raised by the memorandum of appeal filed in his Court within six weeks from the date of the receipt of this order, when ten days will be allowed for filing objections.

ORIGINAL CIVIL.

Before Mr. Justice Kernan.

1889. February 20.

SHANKS *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL.*

Civil Procedure Code, s. 257—Practice—Order for payment of costs of day—Payment into Court or to party.

Where a party to a suit was directed by the High Court to pay the costs of the day, and his solicitor paid the money into Court under s. 257 of the Code of Civil Procedure.

Held, that section was not applicable as the order was not a decree:

APPLICATION made on 20th February 1889 before Mr. Justice Kernan in Chambers for leave to execute an order passed on 18th October 1888 that defendant should pay the plaintiff the

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* Civil Suit No. 174 of 1887.

costs of the day. The defendant, instead of paying the amount to the plaintiff, paid it into Court under s. 257 of the Code of Civil Procedure.

The plaintiff's attorney (*Champion*) contended that plaintiff was entitled to have the money paid to him direct, and that the money ought not to have been paid into Court, and that plaintiff was not bound to go to the expense of applying for payment out of Court.

The Acting Advocate-General (Mr. *Spring Branson*) for the defendant contended that the course adopted by the defendant's solicitor was correct, as the order of the Court amounted to a decree within the meaning of s. 257 of the Code of Civil Procedure.

KERNAN, J.—An order was made, under s. 218 of the Civil Procedure Code on the 18th of October last, that the defendant should pay the costs of the day. The taxed costs, including Rs. 45 for costs of execution, amounted to Rs. 189-8-0. The defendant's attorney lodged the amount in Court, treating the order as a decree under s. 257. Section 257 provides that all moneys payable under a decree should be paid as follows: 1st into the Court whose duty it is to execute the decree, &c. The present is an application to me in Chambers to decide whether payment into Court was the proper course for the defendant's attorney to adopt. A decree is defined by s. 2 of the Code to mean the general expression of an adjudication upon any right claimed or defence set up in a Civil Court, when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. Certain orders are in that section specially referred to as within the definition. But the order made in this case is not one of those included in the definition. Amongst the orders excluded from the definition are orders mentioned in s. 588, several of those excluded orders are marked under sections of the Code mentioned in s. 588, which enable the Court to award costs. The result is that orders for payment of costs under the following sections are clearly not decrees, viz., 47, 53, 103, 108, 116, 294, 366, para. 2, 370, 371, 45*b*, 455, 458, 473*a*, 475, 476, 558, and 560. The order for payment of costs was awarded, in disposing of an application, under s. 218. It was not an expression of adjudication on any right claimed or defence set up, when such adjudications decided the suit. That definition in s. 2 must be applied as the

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test to the meaning of the word decree whenever it occurs in the Code. Therefore the word decree in 257 does not include the order in this case. The distinctions between orders and decrees are preserved throughout the Code. Section 254 provides that every decree or order directing a party to pay money as compensation or costs may be enforced by the imprisonment of the judgment-debtor, or by attachment of his property as after provided. But s. 257 mentions money payable under a decree. It does not refer to an order, which I cannot but think would have been referred to if it was intended that s. 257 should apply to orders. They make mention in s. 254 of an order, and this absence of reference to an order in s. 257 following so immediately seems to me not to be accidental. I think the omission of the usual "order" in 257 was introduced, having regard to the intention of the Code to provide evidence of the discharge or adjustment of decrees. It is argued, however, that as the person in whose favor the order for costs is made can, under s. 220, 3rd para., execute it as if it was a decree; and as he is within the meaning of s. 2 a decree-holder, and as s. 257, in clause (b), enables the money to be paid to the decree-holders, therefore an order for costs should be treated as a decree so as to come within s. 257, and that the party subject to such order shall have this relief contemplated by s. 257. But, although such orders are executed as decrees, I do not see that s. 257 applies to them. The amount of costs awarded on an application under any of the sections of the Code is generally a small matter, and of small amount, probably contemplated by the Code to be disposed of without the necessity of formal adjustment and certificate of payment into Court. But decrees for payment of money are contemplated as being of more importance, and a record of the adjustment or of the payment of them is therefore provided; for, if the same formality as to adjustment and certificate or payment into Court should be applied to the amount of costs of application awarded under the Code, the result might be that the award of costs of the day or other small sums of costs awarded by the Court on applications, under any section of the Code (most frequently only a few rupees), would be nugatory or nearly so. The costs, if paid into Court, could not be paid out without an order of the Court—the expense of which might be more in many cases than the small amount of costs awarded. Though the Code provides that the orders for costs of application may be executed

as if they were decrees, it does not provide that the amount of such an order should be paid in any of the ways mentioned in s. 257. As an instance, if at Chambers, an order for costs will be Rs. 7, Rule 44, 24th July 1874. Is that sum to be paid into Court, and to be drawn out at the expense of Rs. 5, provided by the Rules on the order to draw it out, or was it intended to burden the party needlessly with that fee on such a small amount? In my judgment the course taken on behalf of the defendant in paying the amount of the costs awarded by the order of the 18th of October was not correct. I think that s. 257 does not apply to the amount of costs awarded in applications, or under orders which are not decrees within the definition of s. 2 of the Code. The Court has, of course, power to make a special order in a fit case for payment of any moneys into Court. I do not recollect having heard, before this case, in practice of costs under mere orders which are not decrees, having been paid into Court under s. 257. Payment to the party authorised to receive costs on getting a receipt is usual. The plaintiff, therefore, is entitled to enforce payment in the usual way unless the money is paid to him. The question is a new one, and the plaintiff has got costs of execution, and therefore I will give no costs of this application.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

QUEEN-EMPRESS

against

BHARMAPPA.*

1888. October 24.

Evidence—Confession, retracted—Corroboration, deposition of witnesses before magistrate read under Criminal Procedure Code, s. 288, insufficient.

Where a prisoner was convicted of murder on a confession, retracted at the trial, corroborated by depositions read under s. 288 of the Code of Criminal Procedure, and also retracted at the trial:

Held, that the prisoner should not have been convicted on such evidence.

* Criminal Appeal No. 336 of 1888.