

immediately of all documents so set out, and, if necessary, order to be transmitted by plaintiffs; plaintiffs if requested by defendants to transmit order by wire to enable inspection of such documents as may have been transmitted to England at all reasonable times and places. Costs reserved, in dealing with which it should be considered whether plaintiffs were in default in not including all causes of action in one suit, or whether their conduct is susceptible of explanation.

Attorneys for the plaintiffs: Messrs. *Roberts Morgan & Co*

Attorneys for defendants: Messrs. *Sanderson & Co.*

1883

PEACOCK
v.
BYJNATH.

APPELLATE CIVIL.

Before Sir Richard Garth, Knight, Chief Justice.

KALI PROSAD BANERJI (JUDGMENT-DEBTOR) v. MESSRS.
GISBORNE & Co. (DEGREE-HOLDERS).*

1883
July 15.

Court Fees' Act (VII of 1870), cl. 17, s. 19—Stamp on memorandum of appeal by judgment-debtor in custody from order refusing application to be declared insolvent.

A judgment-debtor, whilst in custody, applied to the Court, under Chapter XX of the Civil Procedure Code, to be declared an insolvent. The application was refused, and the judgment-debtor appealed against the order rejecting his application. No Court-fee was affixed to the memorandum of appeal.

Held, that no Court-fee was leviable, under cl. 17 of s. 19 of the Court Fees' Act.

In this case Messrs. Gisborne & Co. originally sued the appellant for rent of an ijara held under them by him, and obtained a decree; at the request of the appellant, they agreed to take satisfaction by instalments. The appellant failed to pay one instalment, and was, on the application of Messrs. Gisborne & Co., arrested in execution of their decree.

Having been so arrested, the appellant, whilst in custody, applied to the District Judge of Bankurah to be declared an insolvent under the provisions of Chapter XX of the Code of Civil Procedure. The District Judge heard the application, and rejected it with costs on the ground that the applicant had frau-

Reference under s. 5 of the Court Fees' Act VII of 1870.

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 KALI
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duently transferred his property to friends previous to the application.

The judgment-debtor, whilst still in custody, appealed against the order of the District Judge, but no Court-fee was affixed to the memorandum of appeal.

The Deputy Registrar was of opinion that cl. 17 of s. 19 of Act VII of 1870 applied only (1) to criminal matters; and (2) to petitions by a prisoner personally, and not to petitions presented on his behalf by his vakeel; and that the Court-fee was leviable under art. 11, Sch. II of the Court Fees' Act, as an appeal, not from an order rejecting a plaint, or from an order having the force of a decree.

The Taxing Officer, on the matter being referred to him, was of opinion that the Court Fees' Act applied to both civil and criminal Courts, and that cl. 17 of s. 19 applied to the case of a person in duress, or under restraint of a Civil Court, and that the contention of the Deputy Registrar was erroneous.

He, therefore, was of opinion that as there was no appeal from an order directing the arrest of a judgment-debtor, and as the only way that a person under duress by order of a Civil Court, can get released from such duress, when the District Judge refuses to declare him an insolvent, was to appeal to the High Court against the District Judge's order, as provided by s. 588, cl. 17 of the Code, the appeal was directly connected with the appellant's duress; and that consequently no Court-fee was required under cl. 17 of s. 19 of the Court Fees' Act.

The Taxing Master, however, referred the following questions to the Chief Justice under s. 5 of the Court Fees' Act:—

- (1) Are the provisions of cl. 17 of s. 19 limited to petitions directly connected with the duress;
- (2) If so would the present appeal come within that category?

GARTE, C.J.—I think that clause 17, s. 19, Act VII of 1870 is applicable to a case of this kind, and consequently that no Court-fee is payable on the appeal.