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are substantiated, he can, in my opinion, maintain the suit, and reasonably claim declaratory relief But unfortunately the manner in which the lower appellate Court has viewed this case, has prevented it entirely from entering into the merits of the case, upon the issues of fact raised by the parties. The defendants went the length of denying that the plaintiff's mother, Musammat Mohra, was the daughter of Ram Fakir. They alleged that Ram Fakir was not divided from his brothers, whom the defendants represent. There were also minor allegations of facts upon which the parties did not agree, but none of these points have been considered or determined by the lower appellate Court, and there is not even a finding as to whether the family of Ram Fakir and his brothers was joint or divided,—a point which is of course all-important in this case.

Under these circumstances, I think it is impossible to dispose of this appeal finally here, and I would therefore decree this appeal, and, setting aside the decree of the lower appellate Court, remand the case to that Court, under s. 562 of the Civil Procedure Code, for disposal upon the merits, with reference to the observations already made. Costs to abide the result.

STRAIGHT, Offg. C. J.—I agree to the order proposed by my brother Mahmood.

Case remanded.

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May 21.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

ABDUL HAYAI KHAN (PLAINTIFF) *v.* CHUNIA KUAR (DEFENDANT).*

Amendment of decree—Execution of decree—Objection to validity of amendment—Civil Procedure Code, s. 206.

The Court in a suit upon a bond gave the plaintiff a decree, making a deduction from the amount claimed of a sum covered by a receipt produced by the defendant as evidence of part-payment, and admitted to be genuine by the plaintiff. The decree was for a total amount of Rs. 1,282. Subsequently, on application by the decree-holder, and without giving notice to the judgment-debtor, the Court which passed the decree, purporting to act under s. 206 of the Civil Procedure Code, altered the decree, and made it for a sum of Rs. 1,460. The decree-holder took out execution, and the judgment-debtor objected that the decree was for Rs. 1,282 and had been improperly altered. The Court executing the

* Second Appeal No 164 of 1885, from an order of W. T. Martin, Esq., Additional Judge of Aligarh, dated the 2 nd April, 1885, affirming an order of Maulvi Sami-ullah, Subordinate Judge of Aligarh, dated the 22nd March, 1884.

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decree disallowed the objection, on the ground that it was not such as could be entertained in the execution department.

Held that the decree, as it originally stood was in accordance with the judgment, and the Court had no power to alter it as it did, and the proceeding was further irregular, in that no notice was given to the opposite party, as required by s. 206 of the Code.

Held also that when a decree-holder executes his decree, a judgment-debtor is competent to object that the decree is not the decree of the Court fit to be executed, and therefore not capable of execution; and that the judgment-debtor in this case could raise the question whether the decree, which was altered behind his back, was a valid decree and fit to be executed.

THE facts of this case were as follows:—In September, 1880, Chunia Kuar brought a suit against Abdul Hayai Khan on a bond, claiming Rs. 925, principal, and Rs. 1,116-13 interest,—total Rs. 2,041-13. The defendant pleaded payment in satisfaction of the bond-debt to the extent of Rs. 1,196-14. In support of this plea he produced two receipts, one dated the 13th May, 1877, and the other, covering Rs. 875, dated the 27th November, 1878. The plaintiff admitted the first receipt, but denied the genuineness of the second. The only issue which the Court framed was as to whether the second receipt was genuine or not. This issue it decided against the defendant; and, making a deduction of the amount covered by the first receipt, it gave the plaintiff a decree for Rs. 815-2, principal, and Rs. 467-3-6 interest,—total Rs. 1,282-5-6. The decree was dated the 8th February, 1881. On the 22nd March, 1881, the plaintiff applied to have the decree amended, alleging that the amounts, both of principal and interest, entered in the decree, were not correct amounts. She alleged that the principal should be Rs. 817-4-6 and the interest Rs. 643-9-6, —total Rs. 1,460-14. On the 14th May, 1881, without giving notice to the defendant, the Court ordered the decree to be amended as prayed. On the decree-holder applying for execution of the decree as amended, the judgment-debtor objected to the validity of the amendment. The Court executing the decree held that it was not competent to entertain the objection in the execution-department. On appeal by the judgment-debtor the lower appellate Court concurred in the view taken by the first Court, and further decided that "the amendment was owing to arithmetical errors in calculating interest, and the amendment was not contrary to the judgment."

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The judgment-debtor appealed to the High Court. The respondent not appearing, the appeal was heard *ex-parte* in her absence, and the Court (Oldfield and Brodhurst, JJ.) decreed the appeal, and set aside the orders of the lower Courts allowing execution. The respondent applied for the re-hearing of the appeal, and the application having been granted, the appeal again came on for hearing.

Pandit *Ajudhia Nath* and Munshi *Kashi Prasad*, for the appellant.

Pandit *Ajudhia Nath* contended that the amendment of the decree was illegal, as it was not at variance with the judgment as originally framed, and because no notice of the proposed amendment had been given to the judgment-debtor.

Mr. *T. Conlan* and Mr. *G. T. Spankie*, for the respondent.

Mr. *Spankie* contended that the specification of relief granted in the decretal order of the judgment was arithmetically wrong, and at variance with that part of the judgment which preceded the decretal order; that a decree should agree with that part of the judgment which preceded the decretal order, and might be amended when it did not do so, notwithstanding it agreed with the judgment where the same specified the relief granted, but specified it erroneously by reason of arithmetical errors. It was further contended that the Court executing a decree, which had been amended by a Court competent to amend it, was not competent to determine whether the amendment was valid or invalid. In the execution-department only the questions mentioned in s. 244 of the Civil Procedure Code can be determined.

OLDFIELD and BRODHURST, JJ.—This appeal was on the part of a judgment-debtor against the decree-holder, and was heard and decided on the 25th November, 1885. It has been admitted for re-hearing. It appears the decree, as it originally stood, was for Rs. 1,282-5-6. Subsequently, on application by the decree-holder, the Court which passed the decree, purporting to act under s. 206 of the Code, altered the decree and made it for a sum of Rs. 1,460-14-0. The decree-holder took out execution, and the judgment-debtor objected that the decree was for Rs. 1,282-5-6 and had been improperly altered. The objection was disallowed. On

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appeal to the Judge that officer affirmed the order, and the judgment-debtor has preferred a second appeal to this Court.

We think our original order of the 25th November, 1885, must stand. The decree, as it originally stood, was in accordance with the judgment. The Court had no power to alter it as it did, and the proceeding is further irregular, in that no notice was given to the opposite party as required by s. 206. But a further contention on the part of the decree-holder is, that a question of this kind cannot be entertained in the execution-department; that the decree must stand as altered, and is not open to an inquiry whether it was properly altered when proceedings in execution are being taken. In our opinion this contention is not valid. We think that when a decree-holder executes his decree, a judgment-debtor is competent to object that the decree is not the decree of the Court fit to be executed, and therefore not capable of execution; and we think he could in this case raise the question whether the decree, which was altered behind his back, was a valid decree and fit to be executed. On these grounds our order on this application is similar to the order we made in November, 1885, setting aside the execution proceedings with costs.

Appeal allowed.

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May 22

CRIMINAL REVISION.

Before Mr. Justice Straight, Offg. Chief Justice.

QUEEN-EMPRESS v. MAHESHRI BAKHSH SINGH.

Act XLV of 1860 (*Penal Code*), *s* 189—*Threat of injury to public servant—Necessity of proving actual words used.*

In a prosecution for an offence under s. 189 of the Penal Code, the witnesses differed as to the exact words used by the prisoner in threatening the public servant, though they agreed as to the general effect of those words. The Magistrate, however, considered that the offence was clearly proved, and convicted the prisoner. The Sessions Judge, on appeal, affirmed the conviction, observing that it was immaterial what the words used were, and that the intention and effect of the words were plain.

Held that the Judge was mistaken in regarding it as immaterial what the words used actually were, and that, on the contrary, it was most material that those words should be before the Court to enable it to ascertain whether in fact a threat of injury to the public servant was really made by the accused.

THIS was an application for revision of an order of Mr. F. E. Elliot, Sessions Judge of Allahabad, dated the 1st May, 1886,