FULL BENCH.

1903
February 21.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Blair and Mr. Justice Banerji.

LALJI SINGH (PLAINTIFF) *v.* GAYA SINGH AND OTHERS (DEFENDANTS).*

Civil Procedure Code, section 257A—Execution of decree—Agreement for satisfaction of judgment debt—Agreement which supersedes the operation of the decree not within the terms of section 257A.

Held that an agreement whereby a decree is adjusted, and so rendered unenforceable, is not within the purview of section 257A of the Code of Civil Procedure. *Ram Ghulam* v. *Janki Rai* (1), *Jhabar Mahomed* v. *Modan Sonahar* (2), *Hukum Chand Oswal* v. *Taharunnessa Bibi* (3), *Juji Kamti* v. *Annai Bhatta* (4), *Tukaram* v. *Anantbhat* (5), *Venkata Subramania Ayyar* v. *Koran Kannan Ahmod* (6) and *Hurkissen Dass Serowgee* v. *Nibaran Chander Banerjee* (7) referred to. *Heera Nema* v. *Pestonji Dossabhoy* (8) and *Dhanram Ragho* v. *Ganpat Sadashiv* (9) dissented from. *Dhan Bahadur Singh* v. *Anandi Prasad* (10) and *Dalu Malwahi* v. *Palakdhari Singh* (11) distinguished.

THE facts of this case are as follows:—

One Lalji Singh, on the 3rd of July, 1888, obtained a decree against Gaya Singh and others for a sum of Rs. 278–14-0 and future interest. The decree was put into execution, and the property of the judgment-debtors was advertised for sale. There was found to be due on the 1st of March, 1892, for principal, interest and costs, a sum of Rs. 331-15-0, and on that date the claim was adjusted between the parties in the following manner. The judgment-debtors paid to the decree-holder the sum of Rs. 200; the decree-holder remitted a sum of Rs. 19-15-0; and the judgment-debtors gave a mortgage bond to secure the balance, namely Rs 112, and undertook to pay that amount in two years. The decree was thus satisfied. The judgment-debtors paid a portion of the amount so secured, but failed to pay the rest, and the decree-holder accordingly brought a suit on his bond to recover the balance.

* Second Appeal No. 1388 of 1900, from a decree of C. A. Sherring, Esq., District Judge of Benares, dated the 10th of September, 1900, confirming a decree of Babu Srish Chandra Bose, Munsif of Benares, dated the 26th of April, 1900.

(1) (1884) I. L. R., 7 All., 124.
(2) (1885) I. L. R., 11 Calc., 671.
(3) (1889) I. L. R., 16 Calc., 504.
(4) (1893) I. L. R., 17 Mad., 382.
(5) (1900) I. L. R., 25 Bom., 252.
(6) (1902) I. L. R., 26 Mad., 19.
(7) (1901) 6 C. W. N., 27.
(8) (1898) I. L. R., 22 Bom., 693.
(9) (1902) I. L. R., 27 Bom., 96.
(10) (1896) I. L. R., 18 All., 435.
(11) (1896) I. L. R., 18 All., 479.

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The defence set up was that the bond was void by reason of the provisions of section 257A of the Code of Civil Procedure, the sanction of the Court not having been obtained to the agreement by which the decree was adjusted. The Court of first instance (Munsif of Benares) dismissed the suit, holding that it was not maintainable having regard to section 257 of the Code. The plaintiff appealed, and the lower appellate Court (District Judge of Benares) on similar grounds dismissed the appeal. The plaintiff thereupon appealed to the High Court.

Dr. *Satish Chandra Banerji*, Munshi *Haribans Sahai* and Munshi *Gokul Prasad*, for the appellant.

Mr. *S. B. Sarbadhicary*, for the respondents.

STANLEY, C.J.—This appeal raises a question as to the true interpretation of a section of the Civil Procedure Code, namely section 257A, which has been the subject of great divergence of opinion in the several High Courts, and which is to be found in the portion of Chapter XIX, which deals with the mode of executing decrees. The plaintiff Lalji Singh, on the 3rd of July, 1888, obtained a decree against the defendants Nos. 1 to 3 for a sum of Rs. 278-14-0 and future interest. The decree was put into execution, and the property of the judgment-debtors was advertised for sale. There was found to be due on the 1st of March, 1892, for principal, interest and costs, a sum of Rs. 331-15-0, and on this date the following adjustment of the claim was arrived at between the parties. The judgment-debtors paid to the decree-holder a sum of Rs. 200, and the decree-holder having remitted a sum of Rs. 19-15-0, the judgment-debtors gave a mortgage bond to secure the balance, namely Rs. 112, and undertook to pay that amount in two years. The decree was thus satisfied. The judgment-debtors made some payments on foot of the amount so secured, but failed to pay the entire sum, and in consequence the plaintiff instituted the suit out of which this appeal has arisen to recover the amount remaining due on foot of the mortgage bond.

The defence was set up that the bond was void by reason of the provisions of section 257A of the Code, the sanction of the Court not having been obtained to the agreement by which the claim was adjusted. The Court below decided that this section

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was fatal to the plaintiff's claim and dismissed the suit. Hence the present appeal has been preferred. As the authorities upon the true meaning of section 257A were conflicting, the case was referred to a Bench of three Judges.

The mortgage bond sued on is dated the 1st of March, 1892. It recites the decree of the 3rd of July, 1888, the amount due on foot of it, the advertisement for sale of the judgment-debtors' property and the agreement for the adjustment of the decree in the manner which I have stated. After these recitals the mortgagors hypothecate a share in certain property as security for the payment of the sum of Rs. 112 in two years, with interest at the rate of 8 annas per cent. per mensem, and promise to pay the same. The bond then contains a covenant on the part of the mortgagors for payment of the interest, with a provision that in case of default in such payment, the plaintiff should have power to realize his money with interest at the rate of 12 annas per cent. per mensem; and it also contains a covenant on the part of the mortgagors for payment of the entire principal amount and interest within the stipulated time. The other provisions of the deed it is not material to set forth. From the terms of this document it will be seen that by it there was a complete adjustment of the plaintiff's decree. Upon its execution the decree ceased to be enforceable, and the plaintiff's remedy was, as it seems to me, upon the mortgage bond, and upon that alone. The Court of first instance dismissed the suit, on the ground that the bond was a satisfaction of the plaintiff's decree, and was entered into without the consent of the Court, and was within the purview of section 257A of the Code, and void under the provisions of that section. The learned Munsif relied upon several decisions, and amongst others, upon that of the Bombay High Court in *Heera Nema* v. *Pestonji Dossabhoy* (1).

Upon appeal the District Judge held that the adjustment amounted to a giving of time for payment of the decree, and also provided for the payment of a sum in excess of the sum due, and was in contravention of the section of the Code to which I have referred, the sanction of the Court which passed the decree to the agreement not having been obtained.

(1) (1898) I. L. R., 22 Bom., 993.

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The section in question runs as follows :—"Every agreement to give time for the satisfaction of the judgment-debt shall be void, unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be, under the circumstances, reasonable.

"Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void, unless it is made with the like sanction.

"Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt, and the surplus, if any, shall be recoverable by the judgment-debtor."

This section has been variously interpreted by the several High Courts. By some it has been interpreted to mean that an agreement made in contravention of its provisions, that is without the sanction of the Court, is void *in toto* and for all purposes; by others it has been held that the term "void" means void only for the purposes of execution proceedings, and not void for all purposes. One of the earliest cases bearing upon the subject is that of *Ram Ghulam* v. *Janki Rai* (1). In that case the consideration for a mortgage in respect of which the suit was brought, consisted partly of the amount of two decrees held by the mortgagee against the mortgagor. The mortgagor pleaded failure of consideration as a bar to the enforcement of the mortgage, basing his plea on the fact that the mortgagee had not certified the adjustment of the decrees as provided by section 258 of the Code of Civil Procedure, and therefore the decrees were still in force under the terms of that section. Mahmood, J., commenting upon section 258, observes :—"I hold that the adjustment of a decree out of Court, if never certified to the Court, is ineffectual only so far as the execution of that decree is concerned; but that if such adjustment is made by an agreement in itself valid, such agreement, like other lawful contracts, becomes the basis of a right which, if infringed, can afford a cause of action for a separate suit notwithstanding the provisions of section 244 of the Code of Civil

(1) (1884) I. L. R., 7 All., 124.

Procedure. There is no provision in our law which renders such agreement void or otherwise illegal, and in the present case if the plaintiff-respondent attempts, in breach of the contract contained in the mortgage deed, to execute the decrees, the amount whereof has already been included in the consideration of the deed, he will render himself liable to a separate suit by the defendant-appellant in which full relief could be awarded." The Bombay High Court took a different view of this section, but in a later decision, to which I shall presently refer, the earlier decisions, as I understand them, of that Court were not followed. In the case of *Jhabar Mahomed* v. *Modan Sonahar* (1) the question came up for consideration before a Bench of the Calcutta High Court. In that case the plaintiff had obtained a decree against the defendant, in execution of which the latter was arrested. A compromise was effected between the parties out of Court, by which it was arranged that the defendant judgment-debtor should execute an instalment bond, providing for payment of the entire amount of the bond with interest in default of payment of any instalment. The fact of the decree having thus been satisfied was not certified to the Court. The defendant having failed to pay an instalment, the plaintiff instituted a suit to recover the amount due under the bond. The Judge of the Small Cause Court before whom the case came submitted the following, as also another question, for the decision of the High Court, namely "whether section 257A of the Code of Civil Procedure would bar the institution of a separate suit on the instalment bond, the bond not having been executed with the sanction of the Court." Garth, C.J. and Ghose, J., before whom the reference came, held that the instalment bond was not "an agreement to give time for the satisfaction of a judgment-debt," within the meaning of section 257A of the Code. "We agree," they observe, "with the Allahabad High Court that the provisions of that section are only intended to prevent any binding agreements between judgment-debtors and judgment-creditors for extending the time for enforcing decrees by execution without consideration and without the sanction of the Court. Those provisions

(1) (1885) I. L. R., 11 Calc., 671.

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are not intended to prevent the parties from entering into a fresh contract for the payment of the judgment-debt by instalments, or in any other way, and any such fresh contract, of course, could only be enforced by a fresh suit." They then observed that they could not agree with the view which the Bombay High Court had taken of this question. In the case of *Hukum Chand Osval* v. *Taharunnessa Bibi* (1), in which a bond had likewise been given in satisfaction of the balance of decretal money with interest, it was likewise held that section 257A was framed to prohibit the enforcement of an agreement of the kind mentioned in it, if made without the sanction of the Court in execution of the decree, but was not intended to take away the right of parties of entering into a fresh contract, either for payment of the judgment-debt, to give time for such payment, or for the payment of a larger sum than might be covered by the decree, if it be for a proper consideration. Prinsep and Ghose, JJ., in their judgment, say :—"It seems to us that it is only in the event of an application being made to enforce the agreement entered into between the parties under the bond in the course of the execution of the decree that an objection like that now raised could have been successfully made. Section 257A finds its place in the Procedure Code in the Chapter headed "Of the execution of decrees" under division E—"Of the mode of executing decrees;" and there can therefore be no reasonable doubt that what the Legislature had in view in framing that section was simply to prohibit the enforcement of an agreement of the kind mentioned therein if made without the sanction of the Court in execution of the decree. Again in the Madras High Court in the case of *Juji Kamti* v. *Annai Bhatta* (2) it was held that an instalment bond executed by a judgment-debtor in favour of the decree-holder, and in consideration of the benefit of the decree being given up was not void as an agreement falling under section 257A of the Civil Procedure Code. In *Tukaram* v. *Anantbhat* (3), the case to which I have already alluded, where a mortgage bond was given for an amount which included a sum due under

(1) (1889) I. L. R., 16 Calc., 504. (2) (1893) I. L. R., 17 Mad., 382.
(3) (1900) I. L. R., 25 Bom., 252.

a decree, and made the whole amount payable in instalments, it was held that the mortgage bond did not suspend the right to execute the decree, but it put an end to the remedy on the decree, and substituted the mortgage bond, and was therefore not an agreement to give time for the satisfaction of the judgment-debt, and did not fall within section 257A. The learned Chief Justice, Sir Lawrence Jenkins, reviewed and explained the earlier decisions in the Bombay High Court, which were supposed to be authorities for the proposition that such an agreement was in contravention of the provisions of section 257A, and void for all purposes, with the object of showing that they did not support any such proposition, and he held that the mortgage bond in suit did not, according to its true construction, purport to suspend temporarily the right to execute the decree, but to put an end to the remedy on the decree, and to replace it with a mortgage bond; that the bond was itself "the actual and present satisfaction of the judgment, and being such, it necessarily followed that it was not an agreement to give time for the satisfaction of a judgment, for such an agreement *ex vi termini* implied that there had been no actual satisfaction, but merely a stipulation for a future satisfaction." "In other words," he observes, "the agreement to which the first paragraph of section 257A relates is one which suspends, and does not destroy, the rights of execution consequent on the decree." In the case of *Venkata Subramania Ayyar* v. *Koran Kannan Ahmod* (1), in which a judgment-debtor executed a mortgage bond in favour of the decree-holder promising payment of the amount of the decree by instalments, it was provided in the mortgage bond that in default of payment of an instalment the decree-holder should be entitled to recover the amount due by executing the decree, it was held, and properly, in my opinion, if I may say so, that the mortgage was a contract to give time for the payment of the judgment debt within the meaning of section 257A, and was void for want of the sanction of the Court. In his judgment the learned Chief Justice, Sir Arnold White, observes:—"It seems to me clear that on the true construction of the bond the document purports

(1) (1902) I. L. R., 26 Mad., 19.

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to give a two-fold remedy to the plaintiff on failure by the defendants to pay the instalments mentioned in the bond—first, a right to sue for the balance of Rs. 7,500; secondly, a right to recover the balance by executing the decree. It is clear from this that the decree was not intended to be extinguished by the bond, but, on the contrary, to remain in force. There was therefore, no adjustment of the decree." Later on in his judgment the Chief Justice says:—"I think the real test is that adopted by the Bombay High Court in the case reported in I. L. R., 25 Bom., 252. If the parties agree that the judgment debt *qud* judgment debt shall be put an end to, section 257A does not render void the new contract. The new contract does not give time for the satisfaction of the judgment debt, since this judgment debt no longer exists. If the judgment debt is still alive, a new contract like that contained in the bond in the present case to pay the judgment debt appears to me, although it may be supported by fresh consideration, to be an agreement to give time for the satisfaction of the judgment debt, and therefore void under section 257A."

There remain two cases to which I would refer before I deal with the two cases in this High Court upon which much reliance has been placed by the learned counsel for the respondents. The first is the case of *Harkissen Dass Serowgee* v. *Nibaran Chander Banerjee* (1). In that case the plaintiffs had obtained a decree against the defendant Nibaran Chander Banerjee, and in execution of it had arrested him. To secure his release from arrest, Nibaran paid a certain sum of money, and together with his co-defendants executed a promissory note for a sum which was made up of the balance of the decretal amount and costs then due, or to become due, in respect of a bond which they agreed to execute for the balance. The sanction of the Court was not obtained to this agreement, nor was satisfaction of the decree entered up. The suit was instituted upon the promissory note and as a defence section 257A of the Code was relied upon. Sale, J., adhered to the decisions of the Madras and Calcutta High Courts, and held that the section is a bar only to execution proceedings in respect of agreements

(1) (1901) 6 C. W. N., 27.

therein mentioned, and does not prohibit their enforcement by separate suit. He observes, in the course of his judgment, that "the effect of the authorities in the Bombay and Allahabad Courts is that that section has a wider operation, and agreements which fall within it are void for all purposes." He does not refer, and apparently his attention was not directed, to the decision of the Bombay High Court in the case reported in I. L. R., 25 Bom., 252, to which I have referred. There was thus at the time when the judgment last quoted was delivered a consensus of opinion in the Bombay, Madras and Calcutta High Courts, that an agreement whereby a decree is adjusted and so rendered unenforceable in execution does not come within the purview of section 252A of the Code. Since, however, the case before us was argued, this consensus has been interrupted by a Bench of the Bombay High Court, which has refused to accept the decision in *Tukaram* v. *Anantbhat* (1). This is the case of *Dhanram Raglo* v. *Ganpat Sadashiv* (2), in which Crowe and Aston, JJ., followed the ruling in *Heera Neema* v. *Pestonji Dossabhoy* (3), and practically, as I think, refused to follow the later authority.

I now come to the two cases in this High Court upon which reliance has been placed as supporting the contention that the mortgage bond, the subject-matter of this suit, was given in contravention of the provisions of section 257A, and is therefore void. The first of these cases is *Dhan Bahadur Singh* v. *Anandi Prasad* (4). In that case a judgment-debtor asked for time to pay the decretal amount. The decree-holders agreed to give time on condition that he should give them a *hundi* for Rs. 1,500, which represented a portion of the decree-holders' claim which had been dismissed as barred by limitation. The judgment-debtor gave the *hundi*, but the sanction of the Court to the transaction was not obtained. In a suit by the decree-holders to recover the amount secured by the *hundi*, it was held that the transaction was one within the contemplation of section 257A, and inasmuch as it had been made without the sanction of the Court it could not be enforced. It is to be observed

(1) (1900) I. L. R., 25 Bom., 252.
(2) (1902) I. L. R., 27 Bom., 96.
(3) (1898) I. L. R., 22 Bom., 699.
(4) (1896) I. L. R., 18 All., 435.

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in this case that the agreement did not and was not intended to be an adjustment or satisfaction of the decree: it was an agreement to give time for the satisfaction of the judgment debt, and merely suspended, but did not extinguish, the right of execution of the decree. Properly, therefore, as it seems to me, it was held that the agreement was in contravention of section 257A. The learned Judges who heard the appeal, however, in the course of their judgment, comment upon the decision of the Calcutta High Court in the case of *Hukum Chand Oswal* v. *Taharunnessa Bibi* to which I have referred. They say:—"The District Judge considered that the decision of the Calcutta High Court in *Hukum Chand Oswal* v. *Taharunnessa Bibi* applied. So it did apply, but we entirely dissent from the view of the law therein expounded. Where the Legislature has thought right to declare an agreement void, unless the Legislature expressly limits the application of its enactment, Courts are bound to give effect to it. There is no such limitation to be found in section 257A." This case clearly does not govern the case before us, but in it, no doubt, dissent is expressed from the decision in *Hukum Chand Oswal* v. *Taharunnessa Bibi*. A similar case is that of *Dalu Mahwahi* v. *Palakdhari Singh* reported in the same volume of the Indian Law Reports at p. 479, and decided by the same Judges. In that case the plaintiff had obtained a decree against the defendant which was transferred to the Collector for execution, the property sought to be sold in execution being ancestral. In the Collector's Court the parties entered into an agreement for the payment of the decretal amount by instalments, to which the decree-holder assented on the condition that the judgment-debtor should pay enhanced interest on the decretal amount. When the decree-holder applied in the execution department for the realization of the excess interest, the judgment-debtor refused to pay it, alleging that the agreement was void, being in contravention of section 257A of the Code. The plaintiff then brought a suit to recover such enhanced interest, which was dismissed by the Court below, and also by the appellate Court, on the ground that the agreement was in contravention of section 257A, and therefore not enforceable. In this case, too, the judgment was not intended to be, and was not extinguished by the

agreement. Neither of these decisions, therefore, is applicable to the case which is before us. Here the mortgage bond in suit was given as a complete satisfaction of the judgment debt. The right to execute the judgment was not merely suspended by it, but was extinguished. Consequently, as it appears to me, upon the true construction of section 257A, the mortgage bond was not an agreement within the purview of that section. In interpreting an Act, as also a deed or contract, the meaning is to be found not so much in strict propriety of language as in the subject-matter or occasion on which the language is used, and in the object which is aimed at—*Qui haeret in litera haeret in cortice.* The words in section 257A.—"Every agreement to give time . . . . shall be void," occurring as they do in the chapter of the Code which deals with the execution of decrees, are not, I think, to be interpreted, as they would doubtless be in a Code of substantive law, as amounting to an absolute prohibition against any such agreement, but must be read in connection with the subject-matter of the chapter of the Code of which the section forms part, that is, the chapter dealing with the execution of decrees, and so read, must be construed as forbidding the enforcement of an agreement entered into in contravention of the section while a decree is subsisting and enforceable. The section presupposes the existence of an enforceable judgment. This is apparent from the last clause of it, which provides that any sum which may be paid in contravention of the provisions of the section is to be applied to the satisfaction of the judgment debt.

I approve of the ruling in the case of *Tukaram* v. *Anantbhat*. It is not necessary in this appeal to determine whether or not an agreement made in contravention of section 257A is void for all purposes when the decree in reference to which it is made is still enforceable.

For these reasons I would allow the appeal, set aside the decrees of the Courts below, and remand the case to the Court of first instance under the provisions of section 562 of the Code of Civil Procedure with directions to readmit the suit under its original number in the register, and proceed to

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determine it on the merits. The respondent should, I think, pay the costs of this appeal, and other costs should follow the event.

BANERJI, J.—I agree with the learned Chief Justice that the mortgage bond upon which the plaintiff appellant's suit is based is not an agreement contemplated by section 257A of the Code of Civil Procedure. In my judgment the agreement referred to in that section is an agreement which, whilst keeping alive the judgment debt as a judgment debt, suspends the operation of the decree. This is clear, not only from the position which the section occupies in the Code, but also from its provisions read as a whole. The section appears in Chapter XIX which relates to the execution of decrees, and under Division E, which is headed "Of the mode of executing decrees," and the last paragraph of it provides for the application of any sum paid in contravention of its provisions "to the satisfaction of the judgment debt." This cannot be done unless there is a subsisting judgment debt. The section, therefore, presupposes the existence of a judgment debt. Where the judgment debt is extinguished, in whole or in part, by the substitution for it of a contract of mortgage, such a contract cannot be regarded as an agreement to give time for the satisfaction of a judgment debt within the purview of section 257A, as a judgment debt to the extent to which it has been extinguished is no longer in existence. The mortgage in such a case is only an adjustment of the decree within the meaning of section 258. If the adjustment has not been certified to the Court, it shall not be recognised by the Court executing the decree, which will execute the decree in spite of the adjustment. Section 257A, however, has no application to such a case. In the present instance the plaintiff decree-holder did not, it is true, certify the adjustment, but he has never sought to execute the decree, and, in fact, he has allowed the decree to become incapable of execution by lapse of time. The decree has thus become totally extinct, and its place has been taken by the mortgage which is the basis of the present suit. To such a mortgage section 257A has, as I have already said, no application. As pointed out by the learned Chief Justice, there is on this point a consensus of opinion in the High Courts of Calcutta and

Madras, and in *Tukaram* v. *Anantbhat* (1) the High Cour of Bombay also held the same view. I am not aware of any ruling of this Court to the contrary. The two cases reported in the 18th volume of the Indian Law Reports, Allahabad Series, on which reliance has been placed on behalf of the respondents, and with reference to which the Courts below have dismissed the suit, are clearly distinguishable. This has been fully shown in the judgment of the learned Chief Justice, and it is unnecessary to go over the same ground. In the earlier of the two cases *Dhan Bahadur Singh* v. *Anandi Prasad* (2) there are some observations in the concluding portion of the judgment which may be regarded as supporting the contention of the respondents. If by those observations the learned Judges who decided the case intended to place upon section 257A a different interpretation from that which has been adopted above, I am, with all deference, unable to agree with them. The same remarks apply to the recent case of *Dhanram Ragho* v. *Ganpat Sadashiv* (3). For the above reasons I hold that section 257A is not fatal to the plaintiff's claim, and I concur in the order proposed.

BLAIR, J.—I concur in the conclusion at which the learned Chief Justice has arrived, and also in the reasons which have led him to that conclusion.

BY THE COURT.—We allow the appeal, set aside the decrees of the Courts below, and remand the case to the Court of first instance under the provisions of section 562 of the Code of Civil Procedure, with directions to re-admit the suit under its original number in the register and proceed to determine it on the merits. The respondents are to pay the costs of this appeal, and all other costs will follow the event.

Appeal decreed and cause remanded.

(1) (1900) I. L. R., 25 Bom., 252. (2) (1896) I. L. R., 18 All., 435
(3) (1902) I. L. R., 27 Bom., 96.