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IN THE MATTER OF THE PETITION OF GANGA DAYAL.

is under s. 32, Act XVIII of 1879, for practising in the Court of the Subordinate Magistrate in contravention of the provisions of s. 10 of the Act. S. 32, however, renders a person practising in a Court liable by order of such Court to a fine. The Court in this instance, which might impose the fine, is that of the Subordinate Magistrate, and not that of the Magistrate of the District, who would not have jurisdiction under the terms of the section. The conviction is set aside and the fine will be refunded.

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April 1.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

SHOHRAT SINGH (DECREE-HOLDER) *v.* BRIDGMAN (JUDGMENT DEBTOR).*

Execution of decree—The decree to be executed, where there has been an appeal—Costs.

Held that the decree of the Court of last instance is the only decree susceptible of execution, and the specifications of the decrees of the lower Court or Courts as such may not be referred to and applied by the Court executing such decree.

THIS was a reference to the Full Bench by Straight and Duthoit, JJ. The facts out of which the reference arose and the point of law referred are stated in the order of reference, which was as follows:—

STRAIGHT and DUTHOIT, JJ.—This is an appeal from an order of the Judge of Gorakhpur, reversing an order of the Munsif of Bansi, in the matter of an application of Shohrat Singh, for the execution of a decree held by him against John Hall Bridgman. The questions at issue between the parties were as regards the amount for which execution of decree should be allowed. We are concerned in second appeal with two items only, *viz.*, (i) one of Rs. 404 (Rs. 101 a year for four years), which the Munsif allowed to the decree-holder as mesne profits of the Sadu Nagar ferry, but the lower appellate Court has disallowed; (ii) one of Rs. 40-4-0, on account of costs prior to decree, with interest (Rs. 33-12-0 principal, Rs. 6-8-0 interest).

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* Second Appeal, No. 23 of 1881, from an order of R. F. Saunders, Esq., Judge of Gorakhpur, dated the 12th January, 1881, reversing an order of Maulvi Nazar Ali, Munsif of Bansi, dated the 18th August, 1880.

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(After disposing of the question relating to the first item, the order continued:) The decision of the question at issue as regards the latter item is matter of greater difficulty. The suit which resulted in the decree now under execution was originally decided in the Court of the Munsif of Bansi. It was next heard in appeal by the Subordinate Judge of Gorakhpur, who reversed the Munsif's decree, and it was finally disposed of in this Court, the decree of the Subordinate Judge being affirmed in second appeal.

The decree of the Subordinate Judge contains an order in these terms:—"It is also ordered and decreed that the respondent aforesaid do pay to the appellant aforesaid Rs. 195-6-0 on account of costs in the lower Court charged against him, with future interest." But as a fact the costs in the Munsif's Court were Rs. 161-10-0, not Rs. 195-6-0. The heading of the decree of this Court for costs in the district is blank.

The lower appellate Court has held that the substitution of Rs. 195-6-0 for Rs. 161-10-0 was a mere clerical error, which it is not fair to direct the judgment-debtor to further proceedings to get put right. It has therefore corrected the supposed mistake itself, and allowed under this item Rs. 161-10-0.

The learned pleader for the appellant has argued that in the execution department any amendment of the decree under execution is illegal and invalid. The learned counsel for the respondent, on the other hand, contends that as a matter of fact—the decision of their Lordships of the Privy Council in *Kistokinker Ghose Roy* v. *Burrodacaunt Singh Roy* (1) notwithstanding—the decree of each several Court is in a case of this kind that which is actually executed; and he urges with much force that, if the doctrine of *novatio* of the debt of record by each subsequent decree, or in other words, of the merger of the decree of the lower in that of the higher Court, is in this case to be followed, it is the judgment-creditor, not his client, who will suffer, for the decree of the Subordinate Judge is that of an intermediate Court only, and it is itself superseded by the decree of the High Court, under which even the item of Rs. 161-10-0 is not recoverable.

(1) 10 B. L. R. 101.

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The point raised in these pleadings seems to us to be one of much nicety and difficulty. We therefore refer to a Full Bench of this Court the following question :—

"When a suit is heard in first or second appeal, and a decree passed, is the decree of the Court of last instance, the sole decree which is capable of execution, or may the specifications contained in the decrees of the lower Court or Courts be referred to and enforced by the Court to which the application for execution has been made?"

Munshi *Sukh Ram* and Maulvi *Mehdi Hasan*, for the appellant.

Mr. *Howard*, for the respondent.

The judgment of the Full Bench (STUART, C. J., and STRAIGHT, OLDFIELD, BRODHURST, and TYRRELL, JJ.) was delivered by

TYRRELL, J.—In our opinion the appellate decree is the final decree and the only decree capable of being executed after it has been passed, whether the same reverses, modifies, or confirms the decree of the Court from which the appeal was made. If such final decree is drawn up with proper care and attention to the provisions of the law, it will necessarily contain, *inter alia*, "a correct statement of the amount of costs incurred in the appeal (*a*), and by what parties (*b*), and in what proportions (*c*), such costs, and also the costs in the suit (*d*), are to be paid" - *vide* ss. 206, 519 and 587 with Form No. 176, sch. iv, Act X of 1877. If on the other hand an error or defect in any of these particulars is found or alleged in such final decree, it can be amended and supplied by the Court making the decree and by no other—s. 206 *id.* We may add to avoid future controversy or doubt that we have not overlooked the provisions of s. 638 of the Civil Procedure Code, which exempt Chartered High Courts in the exercise of their appellate jurisdiction from the mandatory terms of s. 579 of the Code. But in the absence of any rules specially framed by the Court for the preparation of its appellate decrees, they should be, and we believe ordinarily are, drawn up in conformity with the rules referred to above. And when they are not so prepared, but the decree of the lower Court with all its specifications is simply affirmed by and adopted in the decree of the last appellate Court, it would then be open to the Court executing such last decree to refer to the decree of the lower Court for information as to its particular contents. But no question of the correctness of

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the contents could be entertained or given effect to by the executing Court. Objections to the decree of the lower Court which has become that of the last appellate Court could be attended to by the latter Court alone. We should therefore say that the decree of the Court of last instance is the only decree susceptible of execution, and that the specifications of the decrees of the lower Court or Courts as such may not be referred to and applied by the Court executing the decree.

APPELLATE CIVIL

1882
April 3.

Before Mr. Justice Straight and Mr. Justice Oldfield.

LACHMI NARAIN (PLAINTIFF) *v.* BHAWANI DIN (DEFENDANT).*

Act XII of 1881 (*N.-W. P. Rent Act*), *ss.* 206, 207—*Suit instituted in Revenue Court partly cognizable in Civil Court.*

A co-sharer sued in a Court of Revenue (i) for his share of the profits of a mahal and (ii) for money payable to him for money paid for the defendants on account of Government revenue. An objection was taken in the Court of first instance that the suit, as regards the second claim, was not cognizable in a Court of Revenue. The lower appellate Court allowed the objection, and dismissed the suit as regards such claim on the ground that the Court of first instance had no jurisdiction to try it. *Held* that, the objection being in effect "an objection that the suit was instituted in the wrong Court," within the meaning of ss. 206 and 207 of Act XII of 1881, the defect of jurisdiction was cured by those sections, and the procedure prescribed in s 207 should have been followed.

THIS was a suit, instituted in the Court of an Assistant Collector of the first class, in which the plaintiff claimed (i) Rs. 218-14-9, being his share of the profits of a certain mahal for 1285 fasli, and (ii) Rs. 252-3-0, being the amount of Government revenue he had paid for the defendants under s. 146 of Act XIX of 1873. The parties were co-sharers in the mahal in question, the defendant Bhawani Din being also the lambardar. The defendant Bhawani Din set up as a defence to the suit, *inter alia*, that the second claim was not cognizable in a Revenue Court, being a claim for money paid for him. The Assistant Collector held that he could take cognizance of such claim; and gave the plaintiff a decree against Bhawani Din for the amount, and for Rs. 17-11-7 profits. On appeal by the defendant the District Court reversed the decree of

* Second Appeal, No. 609 of 1881, from a decree of R. J. Leeds, Esq., Judge of Bánda, dated the 21st March, 1881, modifying a decree of Pandit Kanahia Lal, Assistant Collector of the first class, Hamirpur, dated the 19th January, 1881.