

or unduly rigorous bargain. But the same reason, it is obvious, does not apply to the execution of a decree of a Civil Court. In making such a decree the Judge is not liable, as the debtor is supposed to be, to undue pressure on the part of the creditor. If public policy requires any limitation of the amount of interest to be recovered, this can be provided for in the decree itself. So long as the decree stands, it alone furnishes the standard for the extent to which execution may proceed, if sought, in the way prescribed by law. The analogy applies of *Keating v. Sparrow* (1) and of *Peachy v. Duke of Somerset* (2).

We must reverse the orders of the Courts below, and direct the account to be made up with simple interest on the amount of the decree and on payments necessarily or properly incurred by the judgment-creditor, and with simple interest at the same rate as that provided by the decree on each sum received by the judgment-creditor, who is to obtain an order for execution to the extent of the balance, if any, thus found due to him.

Order reversed and account decreed.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 227 of 1875.

Dec. 20.

BA'BA'JI HARI (ORIGINAL PLAINTIFF, SPECIAL APPELLANT) v. RA'JA'RAM BALLA'L AND ANOTHER (ORIGINAL DEFENDANTS, SPECIAL RESPONDENTS).

Court Fees Act VII. of 1870, Section 16—Pauper Respondent—Memorandum of Objections—Civil Procedure Code (Act VIII. of 1859) Section 348—Pensions Act XXIII. of 1871, Sections 4, 5, 6, 8, 9 and 14—Certificate by Collector.

A pauper respondent is not entitled to present objections at the trial of an appeal without payment of stamp duty.

Section 4 of the Pensions Act XXIII. of 1871 debars the Civil Court from taking cognizance of any suit, whether the Government is a party to it or not, which relates to any pension or grant of money or land revenue conferred or made by the British or any former Government—without a certificate from the Collector or other authorized officer. Section 5 proscribes a remedy for the claimant of such pension or grant, and Section 6 enables the revenue officer to refer the parties to the Civil Court for the determination of their respective interests in the income or other benefit, which the executive will, however, still, as against either or both of the litigants, be at liberty to allow or to withhold.

(1) 1 Bal. and Beat. 367.

(2) 1 Stra. 447; 2 Wh. and Tud. 979 (3rd edn.); see p. 987.

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Lands held free of assessment under a grant from Government, which bestows on the grantee the lands themselves and not merely the Government revenue arising from them, do not fall within the provisions of the Pensions Act.

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THIS was a special appeal from the decision of E. Hosking, Assistant Judge of the District of Satara, in Appeal No. 232 of 1874, reversing the decree of Atchut Jagannath, Subordinate Judge of Rahimatpur.

The plaintiff Bábáji *in forma pauperis* sued the defendants, his cousins, to have his right declared to a ninth share in the *Kulkarni*, *Jyotishi*, and *Deshpánde Watan* of certain villages in the Collectorate of Satara. He also claimed eleven years' arrears of this *watan*, which consisted partly of *inám* lands and partly of allowances paid from the Government Treasury.

The defendants pleaded the Limitation Act and urged other objections, which, for the purposes of this report, it is not necessary to notice.

The Subordinate Judge, on the evidence, found the claim proved, except as to the alleged share in the *Jyotishi Watan*, and disallowing the defendants' plea of limitation, gave the plaintiff a decree accordingly.

The defendants in appeal repeated the objections they had taken in the first Court, and for the first time urged that the cognizance of the suit was barred by the provisions of the Pensions Act of 1871, there being in the case no certificate by the Collector, or any other authorized officer, permitting the suit to proceed as required by Sections 4 and 6 of the Act.

The plaintiff under Section 348 of the Code of Civil Procedure presented a memorandum of objections against the refusal of the Subordinate Judge to award him a share in the *Jyotishi Watan*. This bore no stamp, but he urged that he being a pauper no stamp was necessary.

The Appellate Court was of opinion that the respondent, though a pauper, was by Section 16 of the Court Fees' Act not exempted from the payment of stamp duty, and that his memorandum, therefore, could not be admitted. Finding also that there was not the certificate required by Section 6 of the Pensions Act, the Appellate Court reversed the Subordinate Judge's decree, and rejected the plaintiff's claim *in toto*.

The special appeal was heard by WEST and NA'NA'BHA'I HARIDA'S,
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Ghanashám Nilkanth for the special appellant, the plaintiff:—
The *watan*, of which the plaintiff seeks to recover a share, consists of lands as well as money allowances. With regard to the former, no certificate is necessary. See Special Appeal No. 507 of 1873, *Rávjí Náráyan Mandlik v. the Mámlatdār of Ratnágiri Taluka*, per Westropp, C.J., and Larpent, J., 2nd September 1875. Nor is any certificate necessary in a suit between private parties. The term 'any suit' in Section 4 of Act XXIII. of 1871 should be so construed as to mean only a suit in which the Government or any of its officers is a party. Had the Legislature intended to debar the Civil Courts from the cognizance of all suits relating to pensions or money grants conferred by the Government, it would have said so in more precise and emphatic language than it has done in this or any other section of the Act. So important a privilege as that of suing in the Civil Courts should not be taken away by so imperfectly expressed an enactment. Nor will the Courts divest themselves of jurisdiction unless it be explicitly taken from them by the Act. Section 5 of the Act provides that a claimant of grant of money or land revenue may go to the Collector for the disposal of his claim, which may be disposed of according to such rules as the chief revenue authority may prescribe (1), or be certified under Section 6 of the Pensions Act as a matter fit for the adjudication of the Civil Courts. But neither Section 5 nor any other section lays down that a claimant shall not go to the Civil Court directly. The joint effect of Sections 4, 5, and 6 seems to be—*first*, that when a person wishes to proceed against a private individual, no certificate whatever is necessary; *secondly*, that if he does ask the Collector to dispose of his claim, he must abide by his decision as arrived at in conformity with departmental rules; *thirdly*, that if dissatisfied with the decision, or expected decision, his only remedy is the permission of the Collector for the trial of the suit by the Civil Court; but, *fourthly*, that if a person chooses to go to the Civil Courts directly without the intervention of the intermediate step, there is no

(1) These rules were published on 7th August 1873. See the *Bombay Government Gazette* of that date, p. 656.

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objection to his doing so. This intermediate step is not altogether superfluous or unreasonable. It is quite consistent with reason to suppose that the Legislature should have provided a short and summary procedure for the disposal of their bounty ; but that, at the same time, they should have imposed the necessity of providing a certificate from one of their authorized officers as a condition for a person wishing for a judicial decision after having elected to move for the adoption of the summary procedure.

A pauper respondent is not obliged to pay stamp for his objections. Section 16 of the Court Fees' Act only intended to place a pauper respondent on the same footing as a pauper appellant.

Pándurang Balibhadra:—The property in dispute is all *watan* property attached to offices, the revenue of which is alienated to the grantees. The whole of it is, therefore, amenable to the Pensions Act. The object of this Act is to leave the Government and its officers unfettered in the disposal and distribution of their bounty. It is only in case they feel a difficulty that the Act allows recourse to be had to the Civil Courts. This is a condition precedent to the Civil Courts' jurisdiction ; and the Legislature has in Section 6 provided a form which that condition is to assume. The Collector's certificate is, therefore, absolutely necessary in all suits independently of whether Government be a party or not. If Section 4 was not meant to exclude suits between private parties, there was no necessity to enact Section 9, whereby an exception is made in favor of suits between *Inámdárs* and their tenants.

Ghanashám Nilkanth in reply:—The object of the Pensions Act is not to control the Civil Courts in determining the relative rights of coparceners but to protect the Government. As long as Government have not to pay more than the aggregate sum admitted by them to be due, it does not matter to them how it is distributed amongst the sharers.

WEST, J., in delivering the judgment of the Court said:—The first point that arises for disposal is, whether a pauper respondent is entitled to present objections at the trial of an appeal without payment of stamp duty under the Court Fees' Act VII. of 1870

Section 16 of that Act says absolutely that "the Court shall not hear such objections until the respondent shall have paid the additional fee" due under the Act. No exception is made in favour of pauper respondents. It has been argued by Mr. Ghana-sham that a pauper respondent is, when he presents an objection, a pauper appellant, and entitled to the indulgence in that character; but the grammatical construction of the Act does not allow this indulgence to him, and the reason for this probably was that he already had the opportunity of directly making an appeal without expense for court fees, and that an inquiry into his pauperism at the last stage of the case would involve great delay and inconvenience. We do not think, therefore, that there is any good reason for departing from the literal construction of the enactment to which we have referred.

The second point is, whether the claim was wholly or in part placed beyond the jurisdiction of the Civil Courts by the provisions of Act XXIII. of 1871. On the mere grammatical interpretation of Section 4 of that Act no doubt, we think, could reasonably be entertained of its shutting out the jurisdiction of the Civil Courts in a case like the present. Doubt is created only by the anterior improbability of the Legislature's having intended to shut out all co-sharers in public *beneficia* from the ordinary Courts, even for the determination of their relations *inter se*, without expressing that intention more directly and emphatically than it has done in Act XXIII. of 1871. That Act is, in its earlier portion, obviously intended to guard the executive Government against responsibility to the Civil Courts; but it has been contended that Section 4 should be construed as extending only to claims made against Government for either the whole or some portion of an alleged alienation or allowance out of the revenues. Section 6, it is urged, would then apply to cases in which the executive, absolute as it is with respect to such matters, might desire to be guided by a knowledge of the legal, or *quasi* legal, relations of the parties. But if Section 4 had been intended to apply only to suits against Government and its officers, it is hard to conceive that this should not have been plainly said. As it stands, the section extends to all suits relating to any grant of money made by Government; and the plaintiff, who seeks a share

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in such a grant from his alleged co-sharers, must, we think, be said to bring a suit relating to the grant. Section 5 provides another remedy, such as it is, for the claimant shut out from the Civil Court; and the true intention of Section 6, we think, is to enable the revenue officer, who may be puzzled by the duty which Section 5 casts on him, to refer the parties to a Civil Court for the determination of their respective interests in the income or other benefit which the executive will still, as against either or both of the litigants, be at liberty to allow or to withhold. Section 9 of the Act provides for the case of an *Inámdár* suing his inferior holders or tenants for the land revenue due to him which, it is said, he may recover as he would recover rent. "Nothing in Sections 4 and 8", it is said, shall preclude him from this remedy, and, unless Section 4 was intended to affect other suits than those against Government, this mode of expression would not have been adopted. Again, Section 14, Art. (8), enables the chief controlling revenue authority to make rules for "reference to the Civil Court under Section 6 of persons claiming a right of succession to, or participation in, pensions or grants of money or land revenue payable by Government," which rules are to have the force of law. A person claiming participation in a payment might, no doubt, go direct to the Collector to ask for it, and then be referred to the Civil Court, without such a course necessarily excluding an alternative resort to the Civil Court and the exercise of the Court's jurisdiction in the case of one seeking, without application to the Collector, to establish his right as against his usurping co-sharer; but this is not the necessary construction, nor, we think, looking to the general purpose of the Act, the most probable one. That purpose appears to be to keep the distribution of what is regarded as a bounty of Government wholly in the hands of its executive officers; and if suits for shares could be brought, and rights, or the semblance of rights, established, by some co-sharers, while Government was paying the whole proceeds of a cash allowance to other sharers, the reclamations of the former would at least be embarrassing. They would practically necessitate an investigation by the revenue officer under Section 5, which must terminate by an adjudication similar to that of the Civil Court if it were meant to command any public confidence, or else would entail a reference to the Civil Court under Section 6 with a similar result. Thus, private parties

refused a hearing, or such a hearing as they desired, by the revenue officer, might, so to speak, force his hand, and gain their end by a circuitous process. This cannot have been intended, and the grammatical interpretation of Section 4 prevents such a consequence arising.

We are of opinion, therefore, that, even when proposing to sue a co-sharer to establish his right to an *aliquot* portion of any allowance paid by Government, the suitor must go to the revenue officers and obtain their permission to proceed, and a corresponding certificate under Section 6. We have arrived at this conclusion reluctantly, and not without some doubts as to its correctness; but, upon the whole, we do not think we can properly construe the Act in any other sense, than that which we have given to it.

These remarks apply only to the allowances paid by Government to the family to which the parties belong. As to the lands held by them free from assessment, it has recently been held in this Court by the Chief Justice and Larpent, J., (Special Appeal 507 of 1873) that land held under a grant bestowing them, and not merely the Government revenue arising from them, do not fall within the provisions of the Pensions Act. Mr. Pandurang has contended that there is necessarily a Government revenue arising from the lands in this case, and that it does not appear clearly that the lands, and not merely the revenue arising from them, are held by the parties. But freedom from liability to land revenue is not identical with holding a grant of land revenue, any more than the extinction of an easement by becoming sole proprietor of the property, servient as well as dominant, is a grant of an easement. The land revenue arising from a man's own holding, when it is remitted, and the land pays nothing, is rather extinguished than granted. The lands were not in this case claimed for possession *in specie*; but the reason assigned for this is that they are occupied by lessees who cannot be displaced; the point was not raised in the Court of first instance that the claim was one for alienated land revenue, and we understand it to have extended to the lands themselves, subject, of course, to the rights of the tenants.

We must, therefore, as to the lands in the proceeds of which the plaintiff seeks to establish his right as a sharer, remand the

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cause to the District Court, that the Judge, after determining what portion of the claim relates to lands, as distinguished from money allowances, may pronounce on the other points that arise, viz., as to whether the suit was barred by limitation, and as to what deductions, if any, are to be made on account of expenditure necessarily or properly incurred by the defendants out of the property in which the plaintiff claims a share. He will take such evidence as the parties may adduce on these points respectively.

Issues sent for trial accordingly.

[APPELLATE CRIMINAL JURISDICTION.]

Application for Revision No. 193 of 1875.

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Jan. 19.

Sanction for prosecution—Decree of Bombay Court of Small Causes—Reference by District to Subordinate Judge to execute it—Power of latter to proceed against immovable property—Section 287 of the Code of Civil Procedure (Act VIII. of 1859) and Section 78 of Act IX. of 1850.

Although the Court of Small Causes at Bombay has power to enforce its decree against moveable property only, yet if that decree be transmitted to a Court to which the Code of Civil Procedure applies, the latter can, under Section 287 of that Code, enforce it against immovable property also.

Query—Whether a Court executing the decree of a Small Cause Court under Section 78 of Act IX. of 1850 could enforce it against immovable property.

THIS was an application for revision, under Chapter XXII. of the Code of Criminal Procedure, of the order of W. M. P. Coghlan, Judge of Tháná, sanctioning the institution of criminal proceedings against the petitioner.

In 1872, Premá Paná and two others obtained a decree against Shridhar Bálkrishna in the Bombay Court of Small Causes. For the enforcement of this decree they presented to the District Judge of Tháná an application in the form prescribed by Section 212 of the Code of Civil Procedure, and alleging that the judgment debtor had two salt-pans at Trombay, in the Tháná District. The application did not, however, on the face of it state whether it was made under the Civil Procedure Code, or under Act IX. of 1850. The Judge entrusted the application for execution to the Subordinate Judge, who ordered an attachment and sale of