

Division Court on the Commissioner's certificate, and of this appeal. The appellant, however, must have his costs of the former argument before us on the question whether an appeal lay from the order now reversed (1).

1875.

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SARGENT, J.—I concur that this order must be reversed. I confess I have felt some difficulty in putting on the decree a construction different to that which the Judge making the decree had himself put on it. On consideration, however, I think the plaintiff may contend that whatever the intention of the learned Judge may have been in making the decree, that intention has not been so clearly expressed as to preclude that construction which can alone do justice between the parties. Under the circumstances, therefore, I think the plaintiff is entitled to insist on the appropriation of these payments in the manner for which he contends.

Order reversed.

[APPELLATE CIVIL JURISDICTION.]

Regular Appeal No. 52 of 1874.

GANPAT PUTAYA' (ORIGINAL PLAINTIFF, APPELLANT) v. THE
COLLECTOR OF KANARA (DEFENDANT, RESPONDENT).

1875.
Oct. 5.

The Code of Civil Procedure, Section 309—Attachment—Court Fees—Prerogative of the Crown.

The Crown has the first claim to the proceeds of a pauper suit to the extent of the amount of the court fee that would have been payable at the institution of the suit had the plaintiff not been a pauper; and Section 309 of the Code of Civil Procedure does not preclude the Crown or its representative from urging its prerogative.

THIS was a regular appeal from the decision of A. J. Spens, Judge of the District of North Kanara, rejecting the plaintiff's claim.

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The facts of the case, in so far as they are material to the purposes of this report, are as follows :—

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The plaintiff, Ganpat, obtained a decree against one Jiváji in the Court of the Subordinate Judge of Kumptá, and, in execution thereof, caused a debt due by one Meghji to Jiváji to be attached by a prohibitory order under Section 236 of the Code of Civil Procedure. This attachment was placed when Jiváji's suit against Meghji, which was brought in *forma pauperis*, was pending. At the conclusion of this pauper suit, in which Meghji was directed to pay Jiváji a sum of Rs. 200, and each party was ordered to pay his own costs, the Collector of the District intervened, and applied to have a sum of Rs. 70-2-2 paid to him, that being the amount which Jiváji would have had to pay as court fee if he had not been allowed to sue as a pauper. The Collector's application having been granted and this sum paid to him, the plaintiff, Ganpat, brought this suit against him to recover that sum, alleging that his attachment was prior to the Collector's, and he had, therefore, the right of prior satisfaction.

The Collector in his written statement answered that the plaintiff's attachment was illegal and of no effect. It was made when the suit was pending, and nothing had been determined in favour of one side or the other.

The District Judge was of opinion that the debt attached by the plaintiff was not a definite one, and that it did not appear to have been beneficial to his judgment-debtor Jiváji. Holding the attachment to be illegal, the Judge rejected the plaintiff's claim.

The appeal was heard by WEST and NA'NA'BHA'I HARIDA's, JJ.

Shámráv Vithal for the appellant.—The plaintiff's attachment being prior, he is entitled to prior satisfaction (Section 270 of the Code of Civil Procedure). Moreover, Section 309 of the Code enacts expressly that the value of court fees is to be recovered in the same manner as costs would be recovered in ordinary cases. No precedence is given to the Crown, which is, therefore, in the same position as any other judgment-creditor. By the issue of the prohibitory order, the plaintiff acquired an interest, which was not affected by any subsequent proceeding.

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Dhirajlal Mathuradas, Government Pleader, for the respondent, the Collector.—Before the decision of a pauper suit, it is impossible for the Collector to know from whom he is to recover the institution fees; the earliest time to attach the proceeds of such a suit is immediately after its conclusion. The plaintiff's prohibitory order was a direction to all not to pay until the further order of the Court. The object of Section 236, under which it was issued, is to prevent secret payments. A debt for court fees is a Crown debt, and entitled to precedence. The Legislature did not intend that a Collector should be liable to be defeated in every case by a prohibitory order. In the case of *The Secretary of State in Council of India v. The Bombay Landing and Shipping Company* (1) a Crown debt was held to be entitled to the same precedence in execution as a like judgment in England in the absence of a statutory enactment to the contrary.

Shamráv Vithal in reply.

WEST, J., in delivering the judgment of the Court, said:—The decision of this case turns upon the construction of Section 309 of the Code of Civil Procedure. Its direction that the amount of fees, which would have been paid by the pauper plaintiff, shall, on decision of the suit, be recoverable by Government from any party ordered by the decree to pay the same in the same manner as costs of suit are recoverable, does not preclude the Crown or its representative from urging its prerogative and insisting upon its right to precedence. The circumstance of its being placed in the position of judgment-creditor does not reduce its rights of necessity to those of a private judgment-creditor in case of a contest as to prior satisfaction out of moneys realized in execution. It is a universal rule that prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in a Statute. This rule of interpretation is well established, and applies not only to the Statutes passed by the British, but also to the Acts of the Indian Legislature framed with constant reference to the rules recognized in England. And the rule, as applied to the present case, is not an unreasonable one. The Crown has a right to receive certain fees at the institution of every suit; it temporarily foregoes its right in the case of pauper

(1) 5 Bom H. C. Rep. 23 O. C. J.

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plaintiffs, and places means in their hands to proceed to judgment against their defendants. It is, therefore, reasonable—supposing always that it is reasonable to levy court fees at all—that the Crown, in consideration of its giving up its right to those fees, should have, for their defrayal, the first claim on the proceeds of the pauper suit. Without the forbearance of the Government to insist on its ordinary rule, the suit, in such a case, could not have been brought or the money realized. As the Government Pleader urged at the bar, if this precedence be not allowed to the Crown, the issue of prohibitory notices under Section 236 of the Code of Civil Procedure, instead of furthering justice, would, in many cases, defeat it by defeating the Government's claim for costs altogether.

This being our opinion on the point, it is unnecessary to discuss the other points raised in argument, and we must confirm the decree of the lower court with costs.

Decree confirmed with costs.

[APPELLATE CRIMINAL JURISDICTION.]

Reference by the Session Judge of Poona under Section 263 of the Code of Criminal Procedure in

1875.
Oct. 12.

REG. v. KHANDERA'V BAJIRA V AND SIX OTHERS.

The Code of Criminal Procedure, Section 263—Trial by Jury—Acquittal—Verdict reversed,

The Code of Criminal Procedure, Section 263, casts upon the High Court the duty both of Judge and Jury; but notwithstanding this difference, which clothes it with greater powers and responsibilities than the superior courts in England, it will, as far as may be, be guided by the principle of English law that the verdict of a Jury will not be set aside unless it be perverse and patently wrong, or may have been induced by an error of the Judge. In a proper case, however, the High Court will rectify the verdict of a Jury.

THIS was a reference by W. H. Newnham, the Session Judge of Poona, under Section 263 of the Code of Criminal Procedure.

This was one of the numerous Dekhan agrarian riot cases. The accused Khandera'v Bajira'v and six others were committed by Mr. Macpherson, Magistrate, F. C., in the Poona District, on the