

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice (Officiating), and Mr. Justice M. Melvill.
 DAVLA'TA' (ORIGINAL PLAINTIFF), APPLICANT, *v.* GANESH SHA'STRI
 (ORIGINAL DEFENDANT), OPPONENT.*

1880
 February 3.

*Civil Procedure Codes, Act VIII of 1859, Sec. 206, and Act X of 1877, Sec. 258—
 Act XII of 1879, Sec. 36—Suit to recover money paid out of Court in satisfaction
 of decree—Burden of proof.*

The provisions of section 206 of the Civil Procedure Code (Act VIII) of 1859, may prevent the Court executing the decree from recognizing a payment made out of Court, and do not bar a suit for the refund of such payment.

G. held a decree against D., who satisfied it out of Court, and obtained a receipt from G. to the effect that it was satisfied. Notwithstanding this, G. executed the decree and recovered the amount of it through the Court, although D. pleaded satisfaction in the execution proceedings and produced the receipt. In a suit brought by D. against G. for refund of the money received by G. out of Court, the defendant contended that the suit was not maintainable.

Held that it was maintainable according to the law as it stood before the passing of Act XII of 1879.

Gunamani v. Pran Kishore (1) and *Gulawad v. Rahimtulla* (2) followed.

Quere—Whether such a suit is maintainable under section 36 of Act XII of 1879, which has been substituted for section 258 of Civil Procedure Code (Act X) of 1877.

Held, also, that the statement contained in the receipt passed by G. to D. to the effect that the decree had been satisfied, was sufficient to shift the burden of proof to the defendant to show that it was an incorrect statement.

THESE were applications under the extraordinary jurisdiction of the High Court against the decision of R. F. Mactier, Judge of the District Court of Sátára, in appeal No. 220 of 1878, reversing the decree of D. N. Randive, Subordinate Judge (Second Class) at Wái, in Original Suit No. 19 of 1877.

The plaintiff sued the defendant for Rs. 107-3-0, which he claimed to recover under the following circumstances. The defendant had obtained a decree against the plaintiff, who satisfied it out of Court, and obtained a receipt (exhibit No. 3), dated the 23rd June 1870, from the defendant, to the effect that the decree was satisfied. Notwithstanding this, the defendant executed the decree, and recovered from the plaintiff the amount due under it, viz., Rs. 95.

*Applications under extraordinary jurisdiction, Nos. 86 and 146 of 1879.

(1) 5 Beng. L. R. 223.

(2) 4 Bom. H. C. Rep. 76.

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In the execution proceedings the plaintiff pleaded satisfaction of the decree, and produced the receipt (No. 3) ; but he was overruled by the Court, the payment not having been certified to the Court as required by section 206 of the Civil Procedure Code (Act VIII of 1859). The plaintiff, therefore, brought the present suit for recovery of the amount paid by him, viz., Rs. 95, together with Rs. 12-3-0 on account of interest thereon. He filed his plaint on the 10th January 1877, and produced the receipt (exhibit No. 3) in support of his claim.

The defendant Ganesh answered that he wrote the receipt (exhibit No. 3), but that he received no money for it ; that it was no proof, under section 206 of the Civil Procedure Code, that the plaintiff had made any payment to him in satisfaction of the decree.

The Subordinate Judge made a decree in the plaintiff's favour for the amount claimed.

In appeal the District Judge reversed the decree of the first Court, holding that as the payment had not been made through the Court as required by section 206 of the Civil Procedure Code (Act VIII) of 1859, it was illegal, and that the claim could not be maintained. He accordingly rejected the suit, with costs, on the 14th June 1879.

The plaintiff thereupon applied to the High Court under its extraordinary jurisdiction, as the amount of his claim was less than Rs. 500, for which there was no second appeal. The application was heard by M. Melvill and Pinhey, JJ.

Ghanashám Nilkanth Nádkarni for the applicant.—The decision of the District Judge is opposed to the Full-Bench ruling of the Calcutta High Court in *Gunamani v. Pran Kishore*⁽¹⁾ and the decree of the Bombay High Court in *Gulawad v. Rahimtulla*⁽²⁾.

V. M. Pandit for the opponent.

M. MELVILL, J.—The Full-Bench decision of the Calcutta Court in *Gunamani v. Pran Kishore*⁽³⁾ is expressly in favour of the plaintiff, and is in accordance with the view taken by this Court in *Gulawad v. Rahimtulla*⁽⁴⁾.

(1) 5 Beng. L. R., 223.

(2) 4 Bom. H. C. Rep. 76.

(3) 5 Beng. L. R., 223

(4) 4 Bom. H. C. Rep. 76.

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The view expressed in these cases, viz., that the provisions of section 206 of Act VIII of 1859 only prevent *the Court executing the decree* from recognizing a payment made out of Court, was very clearly adopted by the Legislature in section 258 of the new Civil Procedure Code (Act X of 1877) as originally passed. Whether the section which has been substituted for section 258 by Act XII of 1879, requires the adoption of a contrary view, we are not now called upon to determine. The present case must be decided in accordance with the law as it stood before Act XII of 1879 was passed, and under that law, as interpreted by the Courts, the present suit was maintainable.

The decree of the District Judge must be reversed, and the case remanded for a decision, whether the plaintiff has proved satisfaction, in whole or in part, of the decree executed against him; and, if so, that a decree may be passed in the plaintiff's favour to the extent of the sum proved to have been paid in satisfaction. In coming to a conclusion on the question referred to him, the District Judge should not overlook the circumstance that the defendant in his written statement admits that he signed the receipt. Costs to follow final decision.

Decree reversed and case remanded.

On remand the District Judge again dismissed the plaintiff's claim, on the ground that he had failed to prove it. The plaintiff thereupon again applied under the Court's extraordinary jurisdiction. The application was heard on the 12th February 1880.

G. N. Nádkarni for the applicant.—The defendant has admitted in his written statement that he wrote the receipt (exhibit No. 3.) The District Judge, therefore, was wrong in rejecting the plaintiff's claim as not proved. The burden lay upon the defendant to prove that what he had stated in the receipt was incorrect.

V. M. Pandit for the opponent.

SARGENT, C.J.—The production of the receipt by the plaintiff was sufficient to shift the burden of proof to the defendant, and the question to be determined was whether the defendant had proved that the statement contained in the receipt to the

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effect that the decree in suit No. 434 of 1867 had been satisfied, was an incorrect statement. It would be impossible, on the evidence on the record, for any Court to come to the conclusion that the defendant had displaced the burden which is imposed upon him by the existence of the receipt. We, therefore, reverse the decree of the District Court, and restore that of the Subordinate Judge. Costs on defendant throughout.

Decree reversed.

APPELLATE CRIMINAL.

Before Mr. Justice M. Melvill, Mr. Justice Pinhey, and Mr. Justice F. D. Melvill.

February 12.

IMPERATRIX v. B. KAKDE.

*Defamation—Good-faith—Public good—Indian Penal Code (Act XLV of 1860),
Sec. 499, Exceptions 2 and 9.*

The accused person, an editor of a newspaper, published an article in which the following passage, admittedly referring to the complainant, occurred:—"Has his (the complainant's) character been inquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" The Magistrate found that it was literally true that the complainant had been sent to be prosecuted, but that it was also true that the prosecution had, to the accused's knowledge, been ordered to be withdrawn by the District Judge.

Held that, although the statement contained only the truth, it was incomplete and misleading; and that, as the accused was well aware that the prosecution referred to had been withdrawn, and did not injuriously affect the complainant's character, he could not plead that the imputation made by him on the complainant's character was made in good faith, or for the public good.

THE accused was convicted by A. B. Steward, Magistrate (First Class) at Sholapur, of defamation, and sentenced to pay a fine of Rs. 100, or, in default, to suffer two months' simple imprisonment.

The accused Kákde was the editor, printer and publisher of a weekly Maráthi newspaper in Sholapur, called the *Kalpataru*. In one of its issues he published an article in which he stated that the Collector of Sholapur had made a rule not to employ a person in the Government service, unless he had passed the public-service examination, and then proceeded to comment upon an

* Criminal Application, No. 265 of 1879.