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exceeded Rs. 110. The suit was, therefore, one in which consent could be given by the parties to the application to it of the special procedure provided by Act XVII of 1879.

Order reversed and case remanded.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887. *March 7.*

BA'BA'JI DHONDSHET, (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE COLLECTOR OF SALT REVENUE, (ORIGINAL DEFENDANT), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), Sec. 544—Appeal by one of several plaintiffs claiming under a joint right—Decree in such appeal binds other co-plaintiffs, although not parties to the appeal—Practice—Procedure.

A. and B. brought a suit against C., and obtained a decree awarding a part of their claim. B. appealed, and the Appellate Court reversed the decree and rejected the plaintiff's claim altogether. Subsequently A., who had not joined in the appeal, applied for execution of the original decree.

Held, that although A. had not been a party to the appeal, he was bound by the decision of the Appellate Court, and was not entitled to take out execution.

THIS was an appeal from the decision of E. T. Candy, District Judge of Ratnágiri, in *darkhást* No. 4 of 1881.

The plaintiffs, Bábáji and his father Dhondu, sued the Collector of Salt Revenue to recover possession of two salt-pans and for mesne profits. On the 29th July, 1881, the District Judge passed a decree awarding their claim in respect of one salt-pan only. Against this decree Dhondu alone appealed to the High Court. The Collector filed cross-objections against the decree, under section 561 of the Civil Procedure Code (Act XIV of 1882). The High Court rejected the plaintiffs' claim *in toto*, and reversed the decree of the Court below.

Subsequently Bábáji, who had not joined in Dhondu's appeal, but who was aware of it, applied for execution of the original decree, contending that, as he had not been a party to the appeal, he was not bound by the decision of the Appellate Court. His application was rejected, and he now appealed against the order of rejection.

* Appeal, No. 104 of 1884.

Shivshankar Govindrám for the appellant:—No person, who is not a party to a suit or other proceeding in a Court, can be affected by the decision in that suit or proceeding. In the present case the appellant was not a party to the appeal preferred by his co-plaintiff. The decree in that appeal cannot, therefore, bind him.

Pándurung Balibhadra, (Acting Government Pleader), for the respondent:—The appellant was fully aware of the appeal made by his father, Dhondu, to the High Court. He allowed him to prosecute the appeal on behalf of both. He is, therefore, bound by the decree in appeal as if he had been a party to it. Section 544 of Act XIV of 1882 enables a Court of appeal in its decision to deal with the interests of all the parties to a suit, although some of them may not have appealed—*Joykisto Cowar* v. *Nittyanund Nundy*(1). Moreover, an appeal opens up the whole case —*Anund Chunder Goopto* v. *Mohesh Chunder Mozoomdár*(2)—and the respondent can file cross-objections to the decree. The High Court in Dhondu's appeal dealt with the whole subject-matter of the suit. It dismissed the claim *in toto*, and reversed the origina decree. That decree is, therefore, incapable of execution. It is no longer in existence, and cannot be executed by the lower Court—*Jadoomony Dabee* v. *Hafez Mahomed Ali Khán*(3) and *Chogálál* v. *Major Trueman*(4).

WEST, J.:—The case of the appellant before us has been argued with much energy by Mr. Shivshankar Govindrám, on the principle that no one not before a Court ought to be affected by its decision. But by section 544 of the Code of Civil Procedure, one of several persons who have stood on a common ground may appeal for all. They are not prevented from appealing severally if they wish to do so; but if they allow one of their number to represent them for pressing their appeal, they must accept his representative character as to the incidents also of the appeal, at least in so far as the jural questions between the parties are concerned: compare *Hari Bhikáji Ghárpure* v. *Náro Vishvanáth*(5). The appeal opens up the whole case though made by but one of

(1) I. L. R., 3 Calc., 738.
(2) 1 Calc. W. R., Civ. Rul., 229.
(3) I. L. R., 8 Calc., 295.
(4) I. L. R., 7 Bom., 481.
(5) Printed Judgments for 1880, p. 121.

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the joint parties in the Court below. This was ruled in *Anund Chunder Goopto* v. *Mohesh Chunder Mozoomdár*[1]. But the case being thus opened up, it is opened up for the respondent as well as for the appellant, and under section 561 the respondent may press any objection against the decree which he could have urged in an independent appeal. Here, the decree below was partly in favour of the joint plaintiffs. One plaintiff appealed, and, on the cross-objection of the defendant, the claim was wholly rejected. By this the other plaintiff was, no doubt, detrimentally affected; but, then, he knew that his co-plaintiff could appeal, and that the law gave to the defendant the right to file a cross-objection. Of this right the Courts cannot deprive the defendant, merely because only one plaintiff appealed instead of both. Were this course followed, one of several defeated parties would invariably make the appeal, and so gain for all of them the advantage of a rehearing without the usual risks, for the law does not provide means whereby the respondent raising a cross-objection can bring other parties than the appellant before the Court. Those other parties, in the case supposed, must almost necessarily be privy to the appeal, and in this case there is no doubt that the present appellant, Bábáji, was cognisant of the appeal made to this Court by Dhondu, (who, indeed, was his father), without joining Bábáji as co-appellant, but avowedly owner with him of the salt-pans in question. The decree of this Court on Dhondu's appeal rejected the whole claim brought by him and Bábáji jointly, and the right on which they sued was indivisible[2]. While this decree stands, there is no command in Bábáji's favour which he or any one can have executed. If the High Court made an improvident order, Bábáji should have sought to get it reviewed. As matters stand, the District Court cannot be called on to execute its decree which has been reversed. We, therefore, confirm its decree in execution now appealed against, with costs on appellant.

Decree confirmed.

(1) 1 Calc. W. R., Civ. Rul., 229.

(2) See Mayuz Droit Romain S. 69, Do. Jugement.