APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Telang.

GOWRI, (ORIGINAL DEFENDANT), APPLICANT, *v.* VIGNESHVAR AND OTHERS, (ORIGINAL PLAINTIFFS), OPPONENTS.* 1892. *February* 11.

Parties—Practice—Appeal—Appeal by some of the parties to a suit—Decree in appeal binding parties to the suit who were not parties to the appeal—Civil Procedure Code (Act XIV of 1882), Sec. 244, Cl. (c)—Decree—Execution.

The plaintiffs filed a suit in ejectment against A., B. and C. The Subordinate Judge decreed the claim. On appeal, the District Judge rejected it. The plaintiffs then preferred a second appeal to the High Court, which finally decided in plaintiffs' favour. To this second appeal the defendant A. was not made a party. In execution of the High Court's decree, A. was dispossessed, but was restored to possession by the Subordinate Judge under section 332 of the Code of Civil Procedure (Act XIV of 1882). This order was reversed, on appeal, by the District Judge. A. thereupon applied to the High Court, under section 622 of the Code of Civil Procedure (Act XIV of 1882), to set aside the District Judge's order as *ultra vires*, on the ground that section 244 of the Code was not applicable to the case, A. not having been a party to the appeal in which the decree under execution was passed, and that, therefore, no appeal lay to the District Judge from the Subordinate Judge's order.

Held, that A. being a party to the suit, though not to the appeal in which the final decree was passed, the District Judge had jurisdiction to hear the appeal under section 244, clause (*c*) of the Code of Civil Procedure.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The opponents filed a suit against Vithal and others, including the present applicant, to recover possession of certain lands, alleging that the defendants were tenants, who had forfeited their tenancy on failure to pay rent. The Subordinate Judge passed a decree awarding possession to the plaintiffs.

Against this decision the defendant Vithal alone appealed to the District Judge, who reversed the decree of the Subordinate Judge.

Thereupon plaintiffs preferred a second appeal to the High Court. The applicant Gowri was not made a party to this appeal.

The High Court held that, if the defendant Vithal did not pay the arrears of rent within three months, the plaintiffs were entitled to recover possession of the lands in dispute.

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Vithal failed to make the payment as ordered, and the plaintiffs took possession, in execution of the High Court's decree, of the whole property, including the land in the possession, of the applicant Gowri.

Gowri thereupon applied to the Court, under section 332 of the Code of Civil Procedure (Act XIV of 1882), to be restored to possession, on the ground that she was not a party to the High Court's decree, in execution of which she was dispossessed. The Subordinate Judge granted this application.

The plaintiffs appealed to the District Judge, who held that no appeal lay against an order under section 332 of the Code of Civil Procedure, and, therefore, rejected the appeal. Against this decision the plaintiffs appealed to the High Court. The High Court was of opinion that the Subordinate Judge's order restoring the applicant to possession was one under section 244, and not 332, of the Code of Civil Procedure (Act XIV of 1882) and was appealable. The case was, therefore, remanded for a decision on the merits. On remand the District Judge reversed the order of the Subordinate Judge which directed the applicant Gowri to be restored to possession.

Against this order the present application was made to the High Court on the grounds (1) that the applicant, not being a party to the High Court's decree, ought not to have been dispossessed in execution of the said decree, and (2) that the District Judge had no jurisdiction to entertain an appeal against the Subordinate Judge's order.

A rule *nisi* was issued to the opponents to show cause why the District Judge's order, in appeal, should not be set aside, as being illegal and *ultra vires*.

Mánekshán Jehánghirshán for the plaintiffs (opponents) showed cause:—The case falls under section 244 of the Code of Civil Procedure (Act XIV of 1882). The applicant was a party to the original suit, and though she was not a party to the appeal in which the final decree was passed, the question whether she was legally dispossessed in execution of the final decree, is one falling under clause (*c*) of section 244. The proceedings in appeal are but a continuation of the original suit, and the

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suit does not terminate until the final decree is passed by the highest Court of appeal. The final decree in the present case, therefore, binds the applicant in common with the other parties to the suit. Refers to *Raghunáth Ganesh* v. *Mulna Amad*[1]; *Nimba Harishet* v. *Sitárám Paraji*[2]; *Rájrup Singh* v. *Ramgolam Roy*[3].

Náráyan Ganesh Chandávarkar, for the applicant, *contra*:—The applicant was not a party to the appeal in which the final decree was passed. She is not, therefore, bound by it. Section 544 of the Code of Civil Procedure does not make one respondent liable under a decree passed against other respondents. No decree can be passed against a party unless he is properly brought before the Court. In section 244, "suit" includes an appeal, and, unless a person is a party to the appeal, he is not bound by the appellate decree, and the case does not fall under section 244. Cites *Gour Kishore* v. *Mahomed Hassim*[4].

TELANG, J.:—The applicant was one of several defendants in a suit brought by her opponent, who sued for possession of land. On appeal to the District Court, to which she was also a party, that claim was rejected. The plaintiff appealed further to the High Court, which awarded it. But to this second appeal the applicant was not made a party. She was, however, ejected in execution, but, on her complaint thereof, her possession was restored by the Subordinate Judge. Her adversary appealed to the District Judge, who, for reasons into which we need not inquire, reversed the Subordinate Judge's order. She now invokes our jurisdiction, under section 622 of the Code of Civil Procedure (Act XIV of 1882), to set aside the District Judge's order as made without jurisdiction.

It has been argued on her behalf that there was no appeal from the Subordinate Judge's order, section 244 not being applicable under the circumstances, she not having been a party to the appeal in which the decree under execution was passed. We are asked to follow *Gour Kishore* v. *Mahomed Hassim*[5], the only reported case, as far as we know, in which the point has been

(1) I. L. R., 12 Bom., 449.
(2) I. L. R., 9 Bom., 458.
(3) I. L. R., 16 Calc., 1.
(4) 10 W. R., 191 Civ. Rul.
(5) 10 W. R., 191 Civ. Rul.

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decided. The words to be interpreted are those of section 244, clause (*c*): "Any other questions arising between the parties to the suit in which the decree was passed or their representatives." The scope of the section is stated by their Lordships of the Privy Council in *Chowdry Wahed Ali* v. *Mussamut Jumaee*[1]. They say: "This enactment was undoubtedly passed for the beneficial purpose of checking needless litigation, and their Lordships do not desire to limit its operation." In the present case we are virtually asked to read the words as if they were "parties to the decree in the suit or in the appeal in which the decree was passed." In the Calcutta case and in *Sankaravadivammal* v. *Kumarasamya*[2], it is, however, pointed out that the words used are "parties to the suit." In the former case it seems that the part of the claim of the plaintiff relating to one of the defendants' lands was rejected by the Court which tried the suit; and when in execution the plaintiff attached these lands it was held that the defendant was not a party to the suit within the meaning of the section, on the ground that he was released from the operation of the decree, and must, as regards the operation of that decree, be considered a stranger to the suit in which he had no further interest or concern.

We are of opinion that, if the Legislature had intended such exceptions to be made, it would have so expressed it, and that we ought to give a literal interpretation to the language of section 244, clause (*c*). If so, the applicant was a party to the suit, and the District Judge had jurisdiction to hear the appeal.

The construction placed upon section 11 of Act XXIII of 1861, which answers to section 244 of the present Civil Procedure Code, by the High Court of Calcutta in *Gour Kishore* v *Mahomed Hassim*[3], was avowedly not the one pointed to by the words of the enactment. And it appears to us to be not in harmony with the intention of the Legislature, as indicated by the language used. That intention appears to be to dispose, in a single litigation, of all questions in reference to the subject-matter of that litigation arising between the parties once properly brought before the Court. The opinion expressed by the

(1) 11 Beng. L. R., at p. 155. (2) I. L. R., 8 Mad., at p. 477.
(3) 10 W. R., 191 Civ. Rul.

Privy Council in *Chowdry Wahed Ali* v. *Mussamut Jumace* as to the proper method of construing a provision of this nature, supports this conclusion. And it also avoids the possible embarrassments which must arise in the event of contradictory orders being made by different Courts with reference to the same subject-matter and between the same parties. Although, therefore, the question is not quite free from doubt, we do not see, on the one hand, enough to justify a departure from the broad language used by the Legislature, and on the other, we do see some reasons, of greater or less weight, to warrant us in giving its full effect to that language.

We may add that this point appears to have been practically disposed of by Sargent, C. J., and Candy, J., in this very case at an earlier stage. On looking into the papers referred to in the judgment of the District Judge, it appears that at first the District Judge, upon the appeal being made to him, considered that the order was not one under section 244, but under section 332, and, therefore, held that no appeal lay to him. Against his decree there was a second appeal to the High Court, and on the 17th February, 1891, the High Court decided that the order of the Subordinate Judge was one under section 244, and *not* under section 332, and that, therefore, an appeal did lie to the District Court, which appeal, accordingly, the District Judge was directed to hear under section 244. It is, therefore, out of the question now for us to hold that the District Judge acted without jurisdiction in hearing the appeal so remanded to him for hearing. But, apart from this consideration, the judgment we have referred to shows that Sargent, C. J., and Candy, J., took the same view of the construction of section 244 as we have arrived at. And, therefore, as the case falls under section 244, it is not one for the Extraordinary Jurisdiction of the Court, and the rule granted in this case must consequently be discharged with costs.

Rule discharged.