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and Glover, JJ. in this very case, *Chowdhry Goluck Chunder* v. *Chowdhry Gunga Narain* (1), for a Division Bench to hold that because the application was so late that the Privy Council might have heard the appeal, we should have felt the difficulty in saying that the amendment could be allowed. In the present case the appellant has failed to show that any injustice was done him by the allowance of the amendment which, as appears to us, was simply in furtherance of the decree. The appeal is dismissed with costs.

(1) *Before Mr. Justice Kemp and Mr. Justice Glover.*

The 23rd May 1872.

CHOWDHRY GOLUCK CHUNDER AND OTHERS (JUDGMENT-DEBTORS) *v.* CHOWDHRY GUNGA NARAIN AND OTHERS (DECREE-HOLDERS).*

Decree, Amendment of—Power to amend.

Baboo *Doorga Mohun Doss* for the appellants.

Baboo *Aushootosh Dhur* for the respondents.

THE judgment of the Court was delivered by

GLOVER, J.—The judgment-debtor is the appellant in this case. He sued a certain number of defendants amongst whom are the present judgment-creditors. The case was decided in favor of the plaintiff against certain defendants, and as against Gunga Narain Masunt and Urdhub Narain, the judgment was that they had been improperly made defendants, and that the plaintiff should pay their costs. The case was appealed to the High Court, and the judgment of the Court below was affirmed. The former defendants thus become judgment-creditors applied to take out execution and to get their costs when it was objected that they were barred by limitation, more than three years having elapsed from the date of the decree. The Judge considered that the time should count from the date of the decree of the High Court, and that therefore their application for execution was in time. Without going into the question whether or not the Judge was right on that point, although as a matter of fact, we are inclined to think that he was right, we think there is a *primâ facie* objection to the judgment-creditors' claim They say that the judgment of the, Court below awarded their costs as against the party who brought the suit. Now as a matter of fact, although there is a remark in the judgment to the effect that these two persons have been improperly made defendants, and that they ought to have their costs from the plaintiff, still in the decree there is no such recital; it merely gives the plaintiff costs as against all the defendants.

It is contended by Baboo Aushoo-tosh Dhur for these defendants that we ought to read the judgment and decree together, and if we can be reasonably certain that it was the intention of the Judge to award costs to the respondents, that we ought to give them such costs.

In the first place it is an extremely dangerous principle to allow any interpolation to be made in the wording of a decree, or to attach any meaning to the words of a decree which cannot be fairly and plainly

* Miscellaneous Regular Appeal, No, 116 of 1872, from an order of the Judge of Midnapore, dated the 9th February 1872.

such an order cannot be made. It appears that several Judges have expressed an opinion that such an order can be made, and it also appears from the decision in *Zuhoor Hossein* v. *Mussamut Syedun* (1) that such an order is open to appeal. And the order of amendment in this case having been made on the 21st August 1872, it is too late now to question it by way of appeal; and therefore being an order which the Court had power to make, and not having been appealed against, it must be taken as final. At the same time we think it right to add that, had this order been now open to question, we should have hesitated very much before confirming it. It is the duty of the parties or rather of their pleaders, when they obtain a decree, to see that it is drawn up in the proper form, and it has been ordered by a Circular Order of this Court of the 19th July 1867 (2) that the Judges should obtain the signatures of the pleaders before the decree is finally signed. If the parties choose to allow so long a time as that allowed in this case to elapse before they take any steps upon the decree without taking any precaution to see that the decree is properly drawn up, it seems to us that it may be fairly presumed that they acquiesced in the decree,

attached to them, and in this case there can be no doubt that no costs are mentioned as being due to the present judgment-creditors. It was the easiest thing in the world for them on seeing the mistake or omission of the Judge on the decretal order to have applied to have that omission rectified. It is said that, in the schedule at the foot of the decree, there is a mention of Gunga Narain's costs, but it is not said in that schedule that they are to be paid by the plaintiff, and they are merely entered in the general list of the costs of the defendants without saying by whom they are to be borne. It is clear at all events that the schedule proves nothing, and the decretal order itself as already observed is silent. On the general principle therefore of the inadvisability of incorporating anything into a decree, or of attaching to it a meaning which the words of the decretal order do not properly and clearly express, we think that we ought not to allow this execution for costs to issue. The creditors are still within time, and they can, if so advised, apply to the Judge to amend his original decree, and to give these defendants the costs which he considers due to them. We may observe that the Judge who passed the decree of 1868 is the same Judge who now presides in the Midnapore Civil Court, and therefore presumbly well acquainted with the circumstances of the case.

We reverse the order of the lower Court, and decree this appeal with costs.

(1) *Ante*, p. 367.

(2) 8 W. R., Civ. Cir., 2.

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and that no alteration ought to be made subsequently. As however we have no power to interfere, the appeal must be dismissed with costs

Appeal dismissed.

Before Mr. Justice Markby and Mr. Justice Birch.

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May 29.

IN THE MATTER OF THE PETITION OF MOULVIE SYUD ZOYNOODDEEN HOSSEIN KHAN.*

Stamp-duty—Refund of Excess of Stamp duty—Court Fees' Act (VII of 1870).

The plaintiff brought a suit for declaration of his *maliki* right over a certain *patni* tenure, and he alleged that the defendants had executed a *hiba* in his favor in consideration of a diamond ring worth Rs. 30,000. He valued his suit at Rs. 5,600, being twenty times the *malikana* of Rs. 280 to which the petitioner alleged he was entitled. The Subordinate Judge held* that the plaintiff was bound to value his suit at Rs. 30,000, the consideration mentioned in the *hibanama*. The plaintiff paid the deficiency, and his suit was ultimately dismissed. The plaintiff appealed to the High Court and valued his appeal at Rs. 5,600, which valuation was accepted by the High Court. On an application by the plaintiff for a certificate authorizing him to receive back from the Collector the excess of stamp-duty paid by him, *held* that the Court had no power to grant it, its power being limited to cases specified in ss. 13, 14, and 15 of the Court Fees' Act; but that there is nothing in the law preventing the Government from refunding any amount which they may think the plaintiff was improperly ordered to pay.

A RULE had been granted on the application of the petitioner calling on the Secretary of the Board of Revenue to show cause why an order should not be made authorizing the petitioner to receive a refund from the Collector of Dacca of Rs. 645 paid by the petitioner in excess of the stamp-duty chargeable in original suit 28 of 1870 instituted by him in the Court of the Subordinate Judge of Furreedpore on 12th March 1870. The rule now came on for hearing.

* *Rule Nisi*. No. 258 of 1873, from an order of the Subordinate Judge of Furreedpore, dated the 12th March 1870.

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IN THE MATTER OF THE PETITION OF MOULVIE SYUD ZOYNOODDEEN HOSSEIN KHAN.

Baboo *Kally Mohun Doss* and Moonshee *Mahomed Yusuf* for the petitioner.

The *Senior Government Pleader* (Baboo *Annoda Prosad Banerjee*) for the Secretary to the Board of Revenue.

The facts and arguments are sufficiently stated in the Judgment of the Court which was delivered by

MARKBY, J.—In this case it is stated in the affidavit on which the rule was granted, that the petitioner instituted a suit in the Court of the Subordinate Judge of Fureedpore for declaration of his *maliki* right over a *patni* tenure, and he alleged that the defendants had executed a *hiba* in his favor in consideration of a diamond ring worth Rs. 30,000. The suit was valued at Rs. 5,600, being twenty times the *malikana* of Rs. 280 which the petitioner alleged he was entitled to. The Subordinate Judge, on an objection taken by the defendants that the stamp-duty paid was insufficient, held that the plaintiff was bound to value his suit at Rs. 30,000, the consideration mentioned in the *hibanama*. The plaintiff accordingly paid the deficiency, the suit proceeded, and it was ultimately dismissed. The plaintiff then appealed to this Court, and again valued his appeal at Rs. 5,600, and that valuation appears to have been accepted by this Court without objection.

Now the plaintiff has come to us asking us to issue a certificate authorizing him to receive back from the Collector the difference between Rs. 330 and 975 which he alleges he was wrongly ordered to pay by the Subordinate Judge. A notice of this application was served upon the Board of Revenue, and the Government pleader has now appeared. He does not attempt to support the correctness of the decision of the Subordinate Judge, and he states that the Government are willing, if the Court think it can be done, to refund the excess fees so paid; but he submits that the Government have no power to do so of its own motion, and that this Court has no power to order it to be done.

Now the only question upon which we can now express any authoritative opinion is as to whether or not this Court can

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order that money to be refunded by issuing a certificate as asked for. We think we are bound to say that we have no such power. This Court can only order a refund in such cases as it is specially authorized to do so. And what those cases are, is stated in ss. 13, 14, and 15 of the Court Fees' Act under which, in the cases specified, certificates authorizing refunds may be granted; but the case does not fall within the language or spirit of either of those sections. There appear to be two cases in which this Court has acted upon those sections. One is *In the matter of the Petition of Prosunno Chunder Roy Chowdhry* (1), and the other is *In the matter of the Petition of Doorga Dass Dutt* (2). We think it is impossible to bring this case within those decisions, and therefore we must reject this application which asks us to issue a certificate authorizing the petitioner to get a refund from the Collector. But at the same time, as we have been asked to do so, we have no hesitation in expressing our opinion that, if the Government think that the plaintiff had

(1) *Before Mr. Justice Markby.*

IN THE MATTER OF THE PETITION OF PROSUNNO CHUNDER ROY CHOWDHRY.

The 2nd September 1872.

THIS was a case referred to the High Court by the Deputy Registrar as follows :—

"The stamp law is silent as regards the refund of excess stamp fee paid in, or as regards the refund of stamp fee paid in by mistake.

"In a matter on the original side, where excess stamp fee had been paid in by an executor on a probate, the Board of Revenue, on the aplication of the executor for a refund of the excess, held that the law provided for no such refund (*a*).

"A Full Bench has, however, held (*per* the late Hon'ble Chief Justice Sir Barnes Peacock):—'It appears to have been the object of the Legislature that where there has been no final decision, and the stamp-duty paid on the petition of appeal has consequently become ineffectual, the party should be entitled to a refund of the stamp-duty' " (*b*)

"As regards the particular matters now before the Court, it is presumed that the applications, though not directly for review, are of that nature, and may therefore be treated as falling under the purview of s. 15, Act VII of 1870."

Baboo *Anund Chunder Ghosal* for the petitioner.

MARKBY, J.—I see no reason why the stamp should not be refunded in this case on the authority of the case referred to.

(2) B. L. R., Sup. Vol., p. 511,

(*a*) Since writing the foregoing, I find that the Government has directed, on a reference from Bombay, that excess stamps put in by mistake in matters of administration should be refunded (see *Gazette of India* of 17th September 1872, p. 782).

(*b*) *In the matter of Doorga Dass Dutt*, B. L. R., Sup. Vol., p. 511.

been improperly ordered to pay a sum of money which was not due, there can be no possible difficulty in their refunding that amount to him notwithstanding the absence of any special provision of the law authorizing them to do so.

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Rule discharged.

ORIGINAL CIVIL.

Before Mr. Justice Macpherson.

S.M.GOLAUPMONEE DOSSEE v. S.M. PROSONOMOYE DOSSEE.

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July. 14.

Suit in Formâ Pauperis—Next Friend a Pauper—Infant.

A suit can be brought in *forma pauperis* by a next friend who is also a pauper.

THIS was a suit in *formâ pauperis*, and was instituted by the father of the plaintiff as her next friend, she being an infant.

Mr. *Bonnerjee*, for the defendant, took a preliminary objection that a suit in *formâ pauperis* could not be brought by a next friend. He referred to Macpherson on Infants, 377, and an *Anonymous case* (1). Such is the practice in England. By the practice of the Supreme Court, no suit could be brought on behalf of any infant without leave previously obtained from the Court on special affidavit stating the circumstances and reasons that it was for the benefit of the infant that the suit should be instituted; see Smoult and Ryan's Rules and Orders, vol. II, pp. 4 & 130. Act VIII of 1859 never intended that a pauper suit should be brought by a next friend.

Mr. *Piffard*, for the plaintiff, contended that, if that were so, it would create great hardship to infants desirous of suing in *formâ pauperis*: it was never intended that a party should be in a worse position because he is an infant, than he would have been, if he had had been of full age. If the present plaintiff had not been an infant, she could have sued in *formâ pauperis*, but if the present objection is good, she could not sue. The privilege to sue in *formâ pauperis* is the privilege of the person entitled to

(1) 1 Ves., Jun., 409.