

# MADRAS HIGH COURT REPORTS

APPELLATE JURISDICTION. (a)

*Regular Appeal No. 54 of 1861.*

SARÁPU VENKADESAN.....*Appellant.*

MÁLAI ISVARAIYYÁ.....*Respondent.*

Where a Commissioner appointed under section 181 of Act VIII of 1859 to investigate the state of accounts between a debtor and a creditor, made his report, on which the judgment appealed against was founded, the High Court, on a regular appeal, refused to take a fresh account.

**T**HIS was a regular appeal from the decision of L. C. Innes, the Civil Judge of Nandayal, in Appeal Suit No. 7 of 1860.

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of 1861.

*Miller* for the appellant, the defendant.

*Mayne* and *Ramanuja Ayyangar* for the respondent, the plaintiff.

The Court delivered the following judgment.

This was a claim on a bond for rupees 4,062-8-0, with interest from the 1st September 1853, the date of its execution.

The defendant admitted the bond; but pleaded a set-off; and that the amount had been liquidated by subsequent payments at different dates.

Under the provisions of section 181 of the Code of Civil Procedure, a Commissioner was appointed to investigate the

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state of accounts between the parties; and on his report the Civil Judge passed judgment in favor of the plaintiff for the sum of rupees 2,652-6-4, being the net amount found to be due by the defendant, with interest on the principal of the bond to the date of the decree.

The defendant has now appealed against this decision.

We are of opinion that the defendant has failed to show that his objections to the original decree rest on any tenable grounds. His vakil has endeavoured to argue that if the Court should now take a fresh account, it will be found that the plaintiff is indebted to the defendant. But we do not think it was the intention of the legislature that such a course should be followed in appeal, or that the materials on which the report of a Commissioner is based should be again examined and scrutinized by the Appellate Court in detail, in a case in which the report of the Commissioner, prepared under the rules contained in section 181 of the Code of Civil Procedure, has been approved of by the Court of first instance. To enter *de novo* on such an enquiry would entirely defeat the intention of the legislature in framing that enactment, the object of which was to shorten and simplify the procedure of the Courts in suits relating to matters of account.

We therefore affirm the original decree, and adjudge the defendant to be further liable for the payment of interest on the net sum of rupees 2,652-6-4 from the date of the decree of the Civil Judge. The defendant will be charged with the costs incurred in the appeal suit.

*Decree affirmed.*