

1867.
July 17.

Referred Case.

GULAWAD CHANDA'BHA'I *Plaintiff.*

RAHIMTULLA' JAMA'LBHA'I *Defendant.*

Act VIII. of 1859, Sec. 206—Adjustment of Decree out of Court—Suit to recover a thing given in satisfaction—Small Cause Court.

Held that the rejection, under Sec. 206 of Act VIII. of 1859, of a defendant's objection, in a Mofussil Small Cause Court, to the execution of a decree, on the ground that it had been adjusted out of court, did not bar his right to bring a suit against the execution creditor, to recover the thing alleged to have been given in satisfaction of the decree.

CASE referred for the decision of the High Court, by Gopálráv Hari Deshmúkh, Judge of the Small Cause Court at Ahmedábád, under Sec. 22 of Act XI. of 1865.

“Rahimtullá, the defendant, obtained a decree in this court, in Case No. 171 of 1864, for Rs. 50 and costs, against Gulawad, the present plaintiff. Rahimtullá executed the decree on the 15th of December 1866, when Gulawad stated that he had given Rahimtullá a gold kanthi or necklace worth Rs. 52, out of the court, in satisfaction of the decree. The objection was overruled; and he paid the whole sum due on the decree.

“Gulawad has now sued Rahimtullá, in Case No. 373 of 1867, for the restoration of the gold kanthi, which, he alleges, Rahimtullá received in satisfaction of the former decree. Rahimtullá denies the acceptance of the kanthi; and pleads that an assertion, which was once rejected, under Sec. 206 of Act VIII. of 1859, cannot form the subject of a new suit. (a)

“Rahimtullá applies to have the point referred for the decision of the High Court.

(a) Sec. 206:—“All monies payable under a decree shall be paid into the Court whose duty it is to execute the decree, unless such Court, or the Court which passed the decree, shall otherwise direct. No adjustment of a decree, in part or in whole, shall be recognised by the Court; unless such adjustment be made through the Court, or be certified to the Court by the person in whose favour the decree has been made, or to whom it has been transferred.” And see *Ex parte Chinndji Bálkrishna*, *post*, p. 85.—ED.

“ The question, therefore, is whether Gulawad has a right of action for the recovery of the kanthi said to be given by him in satisfaction of a decree, an assertion, which, when the decree was in the course of execution, was overruled, under Sec. 206 of Act VIII. of 1859.

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“ My opinion is that Gulawad has a right of action, because such an action does not appear to have been prohibited by any enactment.”

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court are of opinion that the rejection, under Sec. 206 of Act VIII. of 1859, of the claim by the plaintiff—that the decree had been satisfied by giving the defendant the gold necklace—does not bar his right to bring the present suit.

Referred Case.

July 24.

RAVICHAND DALCHHAND Plaintiff.
MOTILAL NARBHERAM Defendant.

Act VIII. of 1859, Sec. 194—Payment by Instalments—Order for, subsequent to Decree—Review—Small Cause Court.

Held that, when the not ordering the amount of the decree to be paid by instalments has arisen from any error or omission, or it is otherwise requisite for the ends of justice, the Court which passed the decree has power to review it, and to make an order for payment by instalments. Otherwise the Court has no power to make such an order subsequent to the decree, without the consent of the judgment creditor.

CASE referred for the decision of the High Court, under Sec. 1 of Act X. of 1867, by Gopalráv Hari Deshmúkh, Judge of the Court of Small Causes at Ahmedábád.

“ In Suit No. 716 of 1867, a decree was given for the plaintiff, on the 17th of May 1867. The defendant, Motilál Narbherám, has, on the 18th of May 1867, presented a petition for a review of judgment: asking the Court to order the amount of the decree to be paid by instalments; and stating that if a petition for review is not admissible on that ground, it may be treated as a miscellaneous petition for an order of payment by instalments.