

“ 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.

1867.

RAVICHAN-
DALICHAND
v.
MOTILAL
NARBHERAM.

“The question is whether an order for instalments can be given under any circumstances, after the judgment has been pronounced.

“If I recollect rightly, I think the Bombay Small Cause Court, in rare cases, makes orders for instalments after the days on which judgments are given. If any one makes such a petition there to the Full Court, he is told that not asking for instalments is no ground for review [a new trial]; but he must apply to the Judge who decided his case, and that he would consider the matter.

“Sec. 194 (a) of Act VIII. of 1859, which authorises the court to make the order, occurs under the head of ‘Judgment and decree;’ hence the presumption is that the order should be a part of the decree. If the decree is not written up to the time the order is made, it may be possible to make it a part of the decree; but otherwise there will be a difficulty.

“My opinion is that it may be necessary to make the order in a rare case indispensably requiring this mode of redress; but that generally no court ought to make an order for instalments, after it has pronounced judgment.

“I have recently found a case which will bear out my opinion. (b)

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court are of opinion 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 that such an order should be made, the court passing the decree has power to review it, and to make an order for payment by instalments; but that it cannot be done in other cases, unless the judgment creditor consents.

(a) Sec. 194:—“In all decrees for the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments with or without interest.”

(b) 1 Calc. W. Rep., Mis. Civ., 6'