

*Referred Case.*1867.  
July 25.

BULKIRÁM NATHURÁM ..... *Plaintiff.*  
 THE GUZERAT MERCANTILE ASSOCIATION,  
 LIMITED, and others ..... *Defendants.*

*Judgment inter partes, when conclusive—Pendency of Appeal—Decree,  
 Staying Execution of—Review.*

*Held* that a former judgment, by a court of competent jurisdiction, upon the same cause of action, was conclusive between the same parties, in a subsequent suit brought in another court, notwithstanding the pendency of an appeal against it; but that the Judge passing a decree in the subsequent suit might, upon application made to him, and security being given, stay the execution of it, until the appeal in the former suit was decided, and might, if the decree in the former suit was reversed, entertain an application for the review of his own decision in the subsequent suit.

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

“In Suit No. 891 of 1867, the plaintiff, Bulkirám Nathurám, claims from the Guzerat Mercantile Association, Limited, and others, salary, at Rs. 200 per mensem, for four months, from 14th December 1866 to 13th April 1867.

“He has produced a decree, which he obtained in the Principal Šadr Amín’s Court, for the salary due to him for some months previous to the 14th of December 1866; and urges that the case should be decided on the strength of that decree, without further investigation.

“The relation between the plaintiff and the defendants is, that the defendants started a company in Ahmedábád, and wrote to the plaintiff to take its management for five years on a salary of Rs. 200 per month. The company proved a failure before the plaintiff could be set to work. He is now prosecuting the defendants for his salary. He sued them once, in the Principal Šadr Amín’s Court, to recover wages for five years, the period agreed upon, and succeeded in obtaining a decree for his wages for eighteen months only, on

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the ground that the whole period had not then expired ; and then, in the Şadr Amín's Court, for the succeeding four months, which he lost, on the preliminary ground that the action was not properly brought, inasmuch as the suit was based upon the Principal Şadr Amín's decree, and not upon the contract. Both the decrees are under appeal. He now brings this court a suit to recover wages for the next succeeding four months.

“The Principal Şadr Amín raised the following issues :—  
 (1) Whether the defendant Tribhuvan did enter into a contract with the plaintiff to employ him for a period of five years, on a monthly salary of Rs. 200, as manager of the Guzerat Mercantile Association ; (2) whether the said Tribhuvan (director of the Guzerat Mercantile Association) had authority to bind the said association by such a contract ; (3) whether the company is liable for the claim ; (4) whether each of the six defendants sued by name is personally liable for the amount claimed ; and (5) whether the plaintiff has a cause of action for the whole amount claimed.

“The Principal Şadr Amín found the first four issues for the plaintiff ; and disposed of the last by decreeing that the plaintiff had then no cause of action to recover the whole amount claimed, but might in future sue the defendants, in the event of their not continuing him in their service.

“The action now pending in this court is to recover so much as has become due up to the date of the suit.

“The defence raised in this court is mainly the same as that raised in the Principal Şadr Amín's Court, viz., that there was no contract binding on the defendants to keep the plaintiff in employment for five years ; and that Tribhuvan, the managing director, had no authority to bind the company. The defendants also contend that the plaintiff cannot sue upon the Principal Şadr Amín's decree, but that he must sue on the alleged contract.

“The plaintiff, Bulkirám, contends that no fresh investigation can now take place, in this or any other original court, respecting these questions, inasmuch as they have been

adjudicated upon in a court of competent jurisdiction between the same parties; and further urges that were the Court to enter into the merits of the case, the issues, that would be raised for decision, would necessarily be substantially the same as those raised in the Principal Şadr Amín's Court: Taylor on Evidence, § 1507 (a), while *the same evidence would sustain both*: *Ibid.*, § 1512. (b) The first decree is, consequently, a bar to all future inquiry respecting matters therein determined.

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“The defendants contend that the whole question should be entered into, and that the Principal Şadr Amín's decree cannot be considered conclusive, as it is not final, and has been appealed against by the defendants. The decision in appeal will not be known for some time, and there may be a special appeal afterwards. They cite Norton on Evidence, pp. 71 and 137, which says: ‘Secondly, it must be a final, and not a mere interlocutory, judgment.’

“The defendants further argue that after the Principal Şadr Amín gave a decree in favour of the plaintiff, the plaintiff filed another action in the Şadr Amín's Court; and it was thrown out, on the ground that the plaintiff could not sue, as he did, upon the Principal Şadr Amín's decree, but that he must have sued upon the contract itself. The plaintiff had produced no proof, except a decree of the Principal Şadr Amín in his favour, in the Şadr Amín's Court.

“The defendants also urge that the cause of action, though similar in nature, is different in time.

“In reply, the plaintiff states that the Principal Şadr Amín's decree, though appealable or appealed against, does not require confirmation from a superior court to give it the force of a decree; and that it should be considered as having full force, until it has been *actually* reversed by a higher tribunal. And in support of this position the plaintiff cites Taylor on Evidence, § 1531: ‘It is not equally obvious, though the law on the subject is now settled, that the

(a) 4 Edn., p. 1429.

(b) *Ibid.*, p. 1434.

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*pendency of proceedings in error* or on appeal will not prevent the judgment from operating as a bar.' (c)

"Respecting the fact of the plaintiff's second suit being dismissed by the Şadr Amín, on the ground that the plaint was based upon the Principal Şadr Amín's decree, and not upon the contract; he argues that that decision of the Şadr Amín is not conclusive, as it proceeded only on a technical point; and cites Taylor on Evidence, § 1528, where it is said: 'Further, a judgment is inconclusive, if it appears that the decision did not turn upon the merits; as, for instance, if the trial went off on a technical defect, or for faults in the declaration or pleadings, or because the action was misconceived, or because the debt was not then due, or because of a temporary disability of the plaintiff to sue, or because the plaintiff had mistaken his character, and had sued as executor instead of administrator, or the like.' (d)

"The question, therefore, is, whether a decree which is appealed against should be received as conclusive evidence on points determined by it.

"My opinion is that it should not be so received."

The case was heard before COUCH, C.J., NEWTON and WARDEN, JJ.

*A'tmárá'm Jagannáth*, for the plaintiff, argued that the decree of the Principal Şadr Amín was conclusive, so long as it was not reversed, between the same parties; and that, therefore, the defendant could not take exception to it and open the case *de novo*. He relied upon the passages from Taylor on Evidence as cited for the plaintiff in the court below.

*Nánábhái Haridás*, for the defendant, argued that the decree was not conclusive; and that, if it were held to be conclusive, great mischief would follow in case it were reversed: for the Small Cause Court would have had to rely

(c) 4th Edn., p. 1452: citing *Doe v. Wright*, 10 A. & E., 763; *Munroe v. Pilkington*, 31 Law J., Q. B., 81.—Ed.

(d) 4th Edn., p. 1450.

upon a decree which was bad ; and also because the plaintiff would thereby harass the defendant by a multiplicity of suits. The passage cited from Taylor was doubtful.

COUCH, C.J.:—The passage quoted from Taylor on Evidence is not, I am afraid, happily expressed, and may perhaps have caused some doubt in the mind of the Judge. The authorities show, as Mr. Taylor says, that the pendency of proceedings in error or in appeal does not prevent a decree being conclusive *at the time*.

PER CURIAM:—The Court are of opinion that the decree of the Principal Şadr Amín is conclusive in the present suit, notwithstanding the pendency of the appeal ; but if the Judge passes a decree for the plaintiff, he may, upon application made to him, and security being given, stay the execution of it, until the appeal is decided ; and if the decree of the Principal Şadr Amín should be reversed, may entertain an application for the review of his decision.

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*Civil Petition.*

Jan. 7.

*Ex parte* CHIMNA'JI BA'LKRISHNA.

*Execution of Decree—Adjustment out of Court—Act VIII. of 1859, Sec. 206.*

*Held*, that Sec. 206 of Act VIII. of 1859 does not apply to adjustments of decrees made before the Act came into operation.

IN the case of a decree against a principal and a surety, the surety paid part of the amount before the Code of Civil Procedure came into operation ; but the District Judge, on an application to execute the decree, refused to recognise such payment, as it had not been made through the court.

PER CURIAM (COUCH, C.J., and NEWTON, J.):—Sec. 206 of Act VIII. of 1859 does not apply to adjustments made before the Act came into operation.

We, therefore, reverse the order of the Judge ; and direct him to re-hear the application for execution of the decree.

*Application granted.*

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