

*Civil Petition.**Ex parte* BHIKA'JI VITHAL A'MBEKAR.1867.
Dec. 2.*Surety—Execution—Appeal—Act XXIII. of 1861, Sec. 11—Civ. Proc. Code, Sec. 204.*

By virtue of Sec. 11 of Act XXIII. of 1861 and the provisions of Sec. 204 of the Code of Civil Procedure, an appeal lies from an order passed in a matter between a judgment creditor and sureties on behalf of a judgment debtor for the performance of the decree.

BHIKA'JI VITHAL A'MBEKAR sued one Trimbakráv Bhikáji, and obtained an order for the attachment of his property before judgment.

The property was accordingly attached, but, in consequence of Raghunáth Dashrathshet and Shekh Háru valad Kádar becoming sureties for the fulfilment of any decree that might be passed up to a thousand rupees, it was released from attachment.

Bhikáji having obtained a decree on the 30th of July 1864 for Rs. 671, applied for execution of the same against the aforesaid sureties in April 1866, and attached their respective properties.

The Sadr Amín of Ratnágiri, Ráv Sáheb Dáji Govind Gupte, upon the application of Raghunáth alone, ordered the attachment on the properties of both the sureties to be removed.

An appeal having been made by the petitioner to the Acting Senior Assistant Judge of the Konkan at Ratnágiri, J. R. Naylor, he, without going into the merits, laid down a preliminary issue, viz., whether an appeal would lie in the case; and decided, on the 22nd of May 1867, that it would not, as in his opinion sureties could not be considered as parties to the suit. Against his order the present petition was presented, and on this day came on for hearing.

Bhairavanáth Mangesh, for the petitioner, argued that the decision of the court below was contrary to the provisions of Sec. 204 of Act VIII. of 1859, and Sec. 11 of Act XXIII. of 1861. He submitted that an appeal would lie.

PER CURIAM (COUCH, C.J., NEWTON and WARDEN, J.J.):—
Mr. Naylor is to be informed that the court has already held,

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in the case of the transfer of a decree, that by the provisions of Sec. 208 of the Code of Civil Procedure, an appeal will lie, under Sec. 11 of Act XXIII. of 1861, on a question between the assignee of the decree and the judgment debtor. Under a similar provision contained in Sec. 204, the Court considers that an appeal lies in a matter between the judgment creditor and the surety of the judgment debtor. The order of the Acting Senior Assistant Judge is, therefore, reversed. He is directed to hear the appeal preferred to him.

Acting Senior Assistant Judge's order reversed.

Civil Petition.

CHA'NGO valad DUDHA' MAHA'JAN *Petitioner.*

KA'LURA'M NA'RA'YANDA'S *Opponent.*

Adjustment of Decree out of Court—Presumption—Civil Proc. Code, Sec. 206—Act XXIII. of 1861, Sec. 11.

K., an execution creditor of C., applied to the Court by which the decree was passed, and caused C. to be imprisoned under it. C. then entered into a compromise upon certain terms with K. for the adjustment of the decree, and K. thereupon, *but without certifying the terms of such adjustment to the Court*, petitioned for the release of C., who was accordingly released.

Subsequently K. again applied to the Court to compel satisfaction of the whole amount of the decree against C.

This application was opposed by C., on the ground that an adjustment of the decree had taken place between him and K. The Judge, however, refused to enter into the question of the adjustment, as the terms of it had not been certified to the Court, under Sec. 206 of the Civil Proc. Code.

Held, on appeal, that the Judge was in error; that it was the duty of K., on applying for the release of C., to certify the adjustment to the Court; that it would be unjust to allow him to take advantage of his own omission to do so, and that, not having done so, the presumption against him was that the decree had been satisfied in full, but that, under the circumstances, it would be the most equitable course to direct the Judge to inquire into the terms of the adjustment.

Case remanded for that purpose.

CHANGO presented a petition (a) to the High Court, in which he stated that Kálurám Náráyandás, by his agent, Govind Rámchandra Garúd, obtained a decree against

(a) See *Yeshoantráv Amritráv Jamín v. Ismáíl Ali Khán*, 2 Bom. H. C. Rep. 99.