

*Special Appeal No. 218 of 1869.*

1869  
Aug. 12.

Ahmed Valad Nanhubhai..... ... *Appellant.*  
Khasaji Valad Karimbhai... ... *Respondent.*

*Commissioner for taking accounts—Exceptions to Commissioner's Report—Power to reopen accounts—Civ. Proc. Code, Sec. 181—Act XXIII. of 1861, Sec. 37.*

An error in the principle on which an account is taken is not the only ground on which a Court should inquire into the correctness of the report of a Commissioner appointed under Sec. 181 of the Code of Civil Procedure.

It is competent to an Appellate Court, under the powers conferred by Sec. 37 of Act XXIII. of 1861, to examine the accounts, even if no exception has been taken to them in the Court appointing the Commissioner.

Madras rulings dissented from.

This was a Special Appeal from the decision of Arthur St. John Richardson, Judge of the District of Ahmednagar, in Appeal Suit No. 265 of 1868, reversing the decree of the Munsif of yevla.

The plaintiff, Ahmed, brought this action to recover a sum of money due upon an account.

The defendant denied that he was indebted to the plaintiff, and pleaded a set-off in his favour.

The Munsif appointed a Commissioner to investigate the state of the accounts between the parties, and report the result; and being, upon the report, of opinion that all the items, except one of Rs. 118, demanded by the plaintiff were held proved by the Commissioner, awarded the claim of the plaintiff, less Rs. 118

The District Judge, without apparently referring to the Commissioner's report, went into an examination of the accounts, and found that the plaintiff failed to prove his claim. He accordingly reversed the munsif's decree.

On the 10th of August 1869 the Special Appeal was argued before LLOYD and MELVILL, JJ.

*Shantaram Narayan* for the Appellant: The Judge should not have gone into the details of the accounts, especially

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as no objection was made to the Commissioner's report before the Munsif : *Sarapu Venkadesan v. Malai Isvaraiyya (a)*; *Venkata Reddi v. Venkataramaiya (b)*.

*Dhirajlal Muthuradas* for the Respondent: The words of Section 181 of Act VIII. of 1859 are large enough to allow the Judge, if he be dissatisfied with the Commissioner's report, to examine the accounts himself.

*Cur. adv. vult.*

12th Aug., 1869—LLOYD, J. :—It has been argued before us in this case that the Judge was wrong in entering into an examination of accounts which have been investigated by the Court of original jurisdiction under Section 181 of the Code of Civil Procedure, and in support of this argument the special appellant's *vakil* has cited two cases from the Madras High Court Reports.

In the former, the Court declined to take a fresh account, on the ground that to enter *de novo* on such an inquiry would entirely defeat the intention of the Legislature in framing Section 181 of the Civil Procedure Code, the object of which was to shorten and simplify the procedure of the Courts in suits relating to matters of account; and in the latter, on the same grounds the Courts declined to enter into the details of an account taken by a Commissioner appointed under the said section.

We are not prepared to endorse the opinion of the Division Courts in Madras, or to declare that an error in the principle on which an account is taken is the only ground on which a Court should inquire into the correctness of a Commissioner's report, and that then the error must be excepted to in the Court appointing the Commissioner.

The law provides that "the proceedings of the Commissioner shall be received in evidence in the case, unless the Court may have reason to be dissatisfied with them," but does not restrict the grounds of dissatisfaction; and if the

original court can make such further inquiry as may be requisite, it is competent to the appellate court to do so under the powers conferred upon it by section 37 of Act XXIII. of 1861

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In this case the Commissioner's report is dated the 25th January 1868, but was not filed until the 30th of April following, the day on which the suit was decided, so it is possible that the defendant had no opportunity of making a formal objection to the report, even if it was incumbent on him to do so.

The question then, is, had the Lower Appellate Court reason to be dissatisfied with the proceedings of the Commission. This is impossible to ascertain from the judges minute; for, although he has entered into a consideration of the accounts at great length, he does not say why he found it necessary to do so; nor does he refer to the report in any way whatever, and his description of the state of the accounts between the parties is wholly unintelligible. We are therefore necessitated to remand the case, in order that the Judge may find:

(1) If there is reason to be dissatisfied with the proceedings of the Commission; and (2) if so, that he may, either himself, or through a Commissioner, investigate the accounts of both parties, and pass a fresh decree on the merits of the case. Costs to follow the final decision.

*Decree reversed and case remanded.*

*Referred Case.*

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HAYATKHA ..... Plaintiff.  
ABDULAKHA ..... Defendant.

*Set-off—Decree*

Held that a defendant may deny the plaintiff's claim and also plead a set-off, and may obtain a decree for it, although no sum may be found to be due to the plaintiff.

The following case was submitted for the decision of the High Court by Gopalrav Hari Deshmukh Judge of