

1872. required to complete registration. Again, how can the ruling objected to by me possibly apply when the value of the matter dealt with is not stated, or when the matter dealt with has no value that can be stated in money ?

In re
KESHAV
KA'SINATH.

If you concur in the arguments I have above set forth, I suggest that the case is a proper one to lay before the Honourable Judges of Her Majesty's High Court of Judicature at Bombay under Section 41 of the Stamp Act for a final decision of the question at issue."

The case was considered by WESTROPP, C.J., GIBBS and BAYLEY, JJ., on the 22nd of April 1872.

PER CURIAM :—The Court concurs with the Revenue Commissioner and the Collector of Púna for the reasons assigned by them, that one power of attorney is sufficient under Section 13 of Schedule II. of the Stamp Act in the case submitted for its consideration, and that no further stamp than that of 8 annas under the said Article is required.

[APPELLATE CIVIL JURISDICTION.]

May 1.

Miscellaneous Appeal No. 10 of 1870.

NA'KODA' ISMA'IL valad A'HMED BARUCHA' *Petitioner.*
KA'SSAM valad AZAM DUPLI*Respondent.*

Assignment of Decree—Application for execution—Civ. Proc. Code, Sec. 208.

A person claiming to be the assignee of a decree should apply for recognition of his title to the Court which pronounced the decree and for leave under Section 208 of the Civil Procedure Code to have his name substituted in lieu of that of the plaintiff.

THIS was a miscellaneous appeal from an order of Mukan-drái Munirái, First Class Subordinate Judge at Súrat.

The respondent, Kássam valad Azam Dupli, obtained a decree in the Recorder's Court at Rangoon against one Kássam Mahomed Baruchá and Husen Mahomed Baruchá. On the application of Kássam Dupli, the decree in

question was transferred to the Court of the Subordinate Judge at Súrát, and filed there. After this transfer, Kássam Dupli assigned the decree to the petitioner, Nákodá Ismáíl. On Nákodá Ismáíl applying for execution of the decree, the Subordinate Judge rejected the application on the ground that the assignment was conditional only, and that, therefore, Nacoda was not entitled to execute the decree as assignee before the fulfilment of that condition.

1872.

NA'KODA'
ISMA'IL
valad
A. BARUCHA
v.
KA'SSAM
valad
A. DUPLI.

The appeal was argued before WESTROPP, C.J., and WEST, J. *Shántárám Náráyan*, for the petitioner, Nákodá Ismáíl. *Anstey* (with him *Nanábhái Haridás*), for the respondent.

Anstey took a preliminary objection to the hearing of the appeal on the ground that the order passed by the Subordinate Judge of Súrát was not appealable, and contended on the merits that the Recorder's Court at Rangoon was the only Court which, under Section 208 of the Code of Civil Procedure, had jurisdiction either to grant or refuse the application of Nákodá Ismáíl, as assignee, for execution of the decree. He cited *Sheo Narain Singh v. Hurbuns Lall. (a)*

Shántárám Náráyan.—It cannot be said that there is no right of appeal under Section 208, because words allowing a discretion are used in that section. Where such words are used, the Code in many cases has expressly provided an appeal. It follows, therefore, that the right of appeal is not taken away where the doing or not doing of a thing is left to the discretion of a Court. On this point, I refer to *M. G. Pendse v. R. S. Málse (b)* as a case in which it has been held that when discretion is not exercised in a sound and reasonable manner, an appeal lies to a higher Court. An assignee is a party to the suit within Section 11 of Act XXIII. of 1861. (c)

Cus. adv. vult.

WESTROPP, C.J.:—This is an appeal from the order of the First Class Subordinate Judge at Súrát, whereby he

(a) 14 Calc. W. R. C. R. 65; S. C. 5 Bengal L. R. 497.

(b) 5 Bom. H. C. Rep. A. C., J. 94.

(c) 1 Bom. H. C. Rep. 9; 4 Bom. H. C. Rep. A. C. J. 119.

1872. refused to execute, at the request of the present petitioner, a decree of the Recorder's Court at Rangoon, obtained by Kássam valad Azam Dupli (the respondent) against Kássam Mahomed Baruchá and Husen Mahomed Baruchá, and which decree, at the desire of the plaintiff, had been transmitted for execution to the Súrat Court before the assignment, which shall be presently mentioned. The mode of execution sought was the arrest of the defendant, Kássam Mahomed Baruchá. The decree is alleged to have been assigned to the petitioner by the respondent. The respondent admitted execution of the deed of assignment, but asserted that it had been executed as an escrow to take effect on the occurrence of an event which had not yet happened, and the Subordinate Judge, coming to that conclusion, refused to execute the decree on behalf of the alleged assignee, the petitioner.

NA'KODA'
ISMA'IL
valad
A. BARUCHA'
v.
KA'SSAM
valad
A. DUPLI.

On behalf of the respondent, his counsel, Mr. Anstey, contended—*1st*, that no appeal against such an order as that of the Subordinate Judge lies to the High Court; *2nd*, that the petitioner should have applied under Section 208 of the Civil Procedure Code, in the first instance, to the Court of the Recorder at Rangoon which made the decree, for permission, as assignee, to enforce it against the defendants, and that until that permission was given no other Court in British India could enforce it, and that it was a matter completely within the discretion of the Court which made the decree whether or not it should recognize the assignee. On the first point, it is unnecessary that this Court should now give any opinion, inasmuch as it is clearly of opinion that it lay with the Court at Rangoon to decide whether or not the petitioner, as assignee, should be permitted to enforce the decree. This Court thinks that the Court mentioned in Section 208 of the Civil Procedure Code means that Court which pronounced the decree which the assignee seeks to have enforced. There is nothing in that section, or in the sections which form its context, to lead this Court to suppose that Section 208 was intended to apply to any other Court than that which had made the decree, and great con-

fusion might follow if any other Court were to assume the power of deciding whether or not the assignee should be allowed to enforce the decree, as, were that the case, there might be presented the anomaly of the Court which made the decree enforcing it in the name of the original plaintiff, and another Court enforcing it on behalf and in the name of the assignee. This Court concurs on this point, in the decision of Bayley and Markby, JJ., in *Sheo Narayan Sing v. Harbans Lall (d)*, that the assignee of a decree should apply to the Court which pronounced the decree for leave under Section 208 to have his name substituted in lieu of that of the plaintiff. But this Court declines to express any opinion as to there being an *unlimited* discretion on the part of the Court which makes the decree to permit or refuse the application of an assignee for such substitution.

1872.

NA'KODA'
ISMA'IL
valad
A. BARUCHA
KA'SSAM
valad
A. DUPLI.

This petition of appeal must (without this Court entering into the merits of the case) stand dismissed with costs.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION.]

Miscellaneous Special Appeal No. 26 of 1871.

Jan. 17.

FRA'MJI RUSTAMJI *Appellant.*

RATANSIA' PESTANJI and another..... *Respondents.*

*Procedure—Order recognizing assignment of Decree—Final Order—
Appeal—Assignee of Decree—Application for Execution.*

An order made by a Court recognizing a person as the assignee of a decree is a final order from which a regular appeal may be preferred.

A person claiming to be the assignee of a decree must apply for recognition of his title to the Court which passed the decree, and not to a Court to which such decree has been transmitted for execution.

THIS application was filed as a miscellaneous special appeal from an order of W. H. Newnham, Judge of the District of Súrat, rejecting an appeal from an order made by the First Class Subordinate Judge of Súrat. The matter was subsequently treated as a regular appeal.

(d) 5 Beng. L. Rep. 497.