

stated consideration that determines whether a writing does or does not require registration: *Rohinee Debia v. Shib Chunder Chaterjee (b)*.

Ganesh Hari Patvardhan for the respondent.

PER CURIAM:—The Court concurs in the decision in *Rohinee Debia v. Shib Chunder Chaterjee*, and is accordingly of opinion that the consideration in the deed of sale, viz., Rs. 80, fixed by the parties thereto, must be regarded as showing the value for the purposes of registration under Act XX. of 1866, which was that applicable to the deed of sale dated 24th November 1869. The registration of that deed, therefore, was optional. This Court reverses the decree of the Assistant Judge, and remands this cause for retrial by him on the merits. Costs throughout to follow the result of the new trial.

Decree reversed and Case remanded.

[APPELLATE CIVIL JURISDICTION.]

Application for Extraordinary Jurisdiction.

No. 32 of 1874.

August.

GAMBHIRMAL and BA'NA'CHAND *Appellants.*

CHEJMAL JODHIMAL and others *Opponents.*

*Appeal—Code of Civil Procedure, Secs. 209 and 364—Act XXIII. of 1861,
Sec. 11—Extraordinary Jurisdiction—Decree—Stay of execution.*

No appeal lies against an order, under the last clause of Section 209 of the Code of Civil Procedure, staying the execution of a decree. The High Court, however, in the exercise of its extraordinary jurisdiction, will examine the judicial propriety of such an order.

Where a Subordinate Judge, in consequence of a fresh suit by the plaintiff, stayed the execution of a decree which was passed in the defendant's favour for costs, the High Court, in exercise of its extraordinary jurisdiction, reversed the stay order.

THIS was an application for the exercise of the High Court's extraordinary jurisdiction.

One, Gambhirmal obtained a decree against Chejmal and others, which was reversed in appeal, and a decree was

(b) 15 Calc. W. R. Civ. Rul. 553.

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given in favour of the latter for costs. This decree was purchased by Bánáchand, who applied for its execution, and a warrant was issued for that purpose. But a second suit against Chejmal and others having been instituted by Gambhirmal for the same subject-matter, "upon a different cause of action, the warrant for execution was recalled, and a stay order issued under Section 209 of the Code of Civil Procedure.

Against this order an appeal was made to the District Judge, Mr. Bosanquet, who entertained the same, and reversed the order, on the ground that the second suit not having been instituted against Bánáchand, who was now the holder of the decree against Chejmal and others, Section 209 of the Code did not authorize the Subordinate Judge to issue the stop order.

Against this order of the District Judge, this application was presented to the High Court.

It was first heard by PINHEY and NA'NA'BHA'I, JJ., on the 27th of April 1874, and a rule issued in the following words :—

"As no appeal lay to the District Court against an order passed by the First Class Subordinate Court under Section 209 of the Code of Civil Procedure, the Court must, under Section 35 of Act XXIII. of 1861, issue a rule *nisi* to the other side, to show cause why the order of the District Court of Ahmednagar in this case, dated 1st April 1874, should not be set aside and direct stay of execution of the said order of the District Court, upon the applicants giving security in the District Court for the due performance of the final orders of this Court."

At the argument of the rule on August 17th before WEST and NA'NA'BHA'I HARIDA'S, JJ.—

Pándurang Balibhadra showed cause :—The order of the Subordinate Court was not under Section 209 of the Civil Procedure Code, as that contemplates a suit against a decree-holder. The very comprehensive words added by Section 11 of Act XXIII. of 1861 to the repealed Section 283 of the

Code, allows such an appeal as the District Judge entertained in this matter. Even if an appeal does not lie the order of the Subordinate Judge is manifestly improper and should be set aside by this Court.

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Bahiravnáth Manges, in support of the rule:—The general words of Section 11 of the amending Act should not be considered as set aside by the specific words of Section 209, and should be taken as limited by the words which precede them in the section itself.

WEST, J. :—We are of opinion that an appeal to the District Court did not lie in this case. It has been urged that as Section 11 of Act XXIII. of 1861 applies not only to the particular cases specified therein, but to “any other questions arising between the parties to the suit, in which the decree was passed, and relating to the execution of the decree,” the order made by the Subordinate Judge in the present case was one falling within that enactment, and, therefore, open to appeal. But a strictly literal interpretation of the words we have quoted, would exclude *Bánáchand* from the operation of the section, as not having been a party to the suit, and on the ordinary principles of interpretation, the enumeration of particulars in the beginning of the section is to be taken as a guide to the intention of the legislature in using the more general words, which follow, as in the cases of *Re Royal Liver Friendly Society*, (a) and *Duke of Buccleuch v. Metropolitan Board of Works*, (b). That the section is not intended to be applied, in its greatest possible latitude, to every case of a question in any way relating to the execution of a decree, is plain from the cases of *Gulawad v. Rahimtulla* (c) and *Goono Monee Dossia v. Pran Kishore Dossee* (d). We think that, regard being had to the purpose of the section and its place in the general scheme of the Procedure Code, it does not override the operation of Section 364, taken with Section 209 of Act VIII. of 1859. These

(a) L. R. 5 Ex. 78 Per Kelly, C. B., p. 80.

(b) *Id. Ib.* 221. Per Blackburn, J., p. 241.

(c) 4 Bom. H. C. Rep. A. C. J. 76.

(d) 13 Calc. W. R. F. B. 69.

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two provisions were made law at the same time, and the subsequently enacted law of 1861, intended mainly to prevent the operation of Section 283 of the Code from being evaded or perverted, does not, by any necessary implication, repeal the more specific provision, already made for the particular case, which we have now to consider (Dwarris on St. 668; 533). Thus the order, made by the Subordinate Judge, was not subject to appeal, and the District Judge's order of reversal must itself be reversed.

But it is open to us, on the present application, to examine the judicial propriety of the order, made by the Subordinate Judge, and we are of opinion that, from that point of view, it cannot be sustained. The decree was one for costs incurred by a defendant in successfully resisting the plaintiff's claim in an original suit, regular appeal and special appeal. The defendant was in such a case entitled to an immediate recoupment of his expenses and ought not to be deprived of it by the plaintiff's filing another suit against him, perhaps as groundless as the former one. If such a proceeding were recognized as a proper ground for suspending execution for costs, a rich man could, by a series of suits, in almost every case, wear out the slender means of a poor one. It was not intended that the Code of Procedure should be used so as thus to become a possible means of injustice and oppression. We are not to be understood as expressing any opinion on the character of the particular suit now instituted by the former plaintiff against the former defendant, but, on general principles, we think the Subordinate Judge's order was not a proper one, and we must set it aside. Each party to bear his own costs throughout in this proceeding.

Order accordingly.