

It is obvious that, if the occupant only could be made answerable for the rent or revenue due to the Government, it would only be necessary to effect a mortgage in order to defraud the State of its dues. This would be entirely opposed to the purposes of the laws for realizing the land revenue; and, in order to obviate any such result, these laws establish a kind of privity of estate between the superior and inferior holder, by which the latter, taking the profits of the land, must satisfy the obligations of the former to Government independently of, and even in opposition to, any agreement between the two contracting parties. The liability adheres to the occupation and enjoyment, and cannot be got rid of, except through its resignation by the sovereign or the sovereign's representatives.

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We must, therefore, reverse the Assistant Judge's decree, and restore that of the Subordinate Judge with costs throughout on the respondent.

[APPELLATE CIVIL JURISDICTION.]

Miscellaneous Special Appeal No. 26 of 1875.

BA'KRISHNA BHALCHANDRA (ORIGINAL PLAINTIFF AND APPLICANT
SPECIAL APPELLANT) v. GOPAL RAGHUNATH (ORIGINAL
DEFENDANT AND OPPONENT, SPECIAL RESPONDENT).

Dec 15.

Hindu Law—Decree—Interest—Rule of 'dāmdapat' not applicable to amounts due on decrees.

The rule of Hindu Law, which limits the amount recoverable at one time by way of interest to the amount of the principal, does not apply to an amount recoverable in execution of the decree of a Civil Court.

THIS was a special appeal against the order of R. F. Mactier, confirming an order of the Subordinate Judge of Karád.

On the 6th of July 1861 the plaintiff, Bálkrishna, obtained a decree against the defendant for Rs. 440-5-6, and interest till the whole sum was paid up. On the 14th of February 1871 he presented an application for the recovery of the balance due on this

1875. decree, alleging that the defendant owed Rs. 82-7-0 on account of the principal and Rs. 535-1-6 on account of the interest. The Subordinate Judge awarded the claim, but limited the amount of interest to the amount of the principal sum.

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Mr. Mactier upheld this decision.

The special appeal was heard by WEST and NA'NA' BHAI' HARI-DA'S, JJ.

Ghanashám Nilkanth Nádkarni, for the appellant, the decreeholder.—The courts below have erred in applying the 'dámdupat' rule of Hindu Law to this demand, which is based on a decree of the Court. The plaintiff seeks full execution of the decree of the Court. The command in the decree must be obeyed, in supersession, if need be, of the general rule of Hindu Law, and it cannot be said to be obeyed unless the entire sum, whatever it may amount to, due on the decree be paid. The Legislature places no other bar on the fulfilment of a decree, except limitation, and the debtor's insolvency within the sense of the Code of Civil Procedure.

[WEST, J.—Can you cite any cases in support of your contention?] I cannot.

There was no appearance on the other side.

The judgment of the Court was delivered by

WEST, J.—The District Court has confirmed the order of the Subordinate Judge, limiting the amount recoverable as interest by the judgment-creditor, to a sum equal to the principal sum awarded by the decree. This decision is based on the rule of the Hindu Law which limits the amount recoverable at one time by way of interest to the amount of the principal. But there is no authority for limiting the amount recoverable in execution of a decree by any such rule. As regards purely private transactions, the law for the protection of the weaker party controls his freedom of contract in the way to which we have referred, or, at least, refuses to enforce the debtor's engagement by means of a duty imposed on the Courts of exercising their powers of coercion to give effect to what it presumes to be an extortionate

or unduly rigorous bargain. But the same reason, it is obvious, does not apply to the execution of a decree of a Civil Court. In making such a decree the Judge is not liable, as the debtor is supposed to be, to undue pressure on the part of the creditor. If public policy requires any limitation of the amount of interest to be recovered, this can be provided for in the decree itself. So long as the decree stands, it alone furnishes the standard for the extent to which execution may proceed, if sought, in the way prescribed by law. The analogy applies of *Keating v. Sparrow* (1) and of *Peachy v. Duke of Somerset* (2).

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We must reverse the orders of the Courts below, and direct the account to be made up with simple interest on the amount of the decree and on payments necessarily or properly incurred by the judgment-creditor, and with simple interest at the same rate as that provided by the decree on each sum received by the judgment-creditor, who is to obtain an order for execution to the extent of the balance, if any, thus found due to him.

Order reversed and account decreed.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 227 of 1875.

Dec. 20.

BA'BA'JI HARI (ORIGINAL PLAINTIFF, SPECIAL APPELLANT) v. RA'JA'RAM BALLA'L AND ANOTHER (ORIGINAL DEFENDANTS, SPECIAL RESPONDENTS).

Court Fees Act VII. of 1870, Section 16—Pauper Respondent—Memorandum of Objections—Civil Procedure Code (Act VIII. of 1859) Section 348—Pensions Act XXIII. of 1871, Sections 4, 5, 6, 8, 9 and 14—Certificate by Collector.

A pauper respondent is not entitled to present objections at the trial of an appeal without payment of stamp duty.

Section 4 of the Pensions Act XXIII. of 1871 debars the Civil Court from taking cognizance of any suit, whether the Government is a party to it or not, which relates to any pension or grant of money or land revenue conferred or made by the British or any former Government—without a certificate from the Collector or other authorized officer. Section 5 prescribes a remedy for the claimant of such pension or grant, and Section 6 enables the revenue officer to refer the parties to the Civil Court for the determination of their respective interests in the income or other benefit, which the executive will, however, still, as against either or both of the litigants, be at liberty to allow or to withhold.

(1) 1 Bal. and Beat. 367.

(2) 1 Stra. 447; 2 Wh. and Tud. 979 (3rd edn.); see p. 987.