

1880

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APPEL-
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CIVIL.

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*Before Sir Charles Sargent, Kt., Chief Justice (Officiating), and
Mr. Justice M. Melvill.*

NYANCHANDRA (*Original Plaintiff*), *Appellant v.* NARAYAN
(*Original Defendant*), *Respondent*.* [2nd February, 1880.]

Practice—Appeal—Civil Procedure Code Act (VIII of 1859), s. 348.

Where the defendant does not appeal against or object to the amount awarded by the first Court to the plaintiff, it is not open to the appellate Court to reduce it.

THIS was a second appeal from the decision of C. H. Shaw, Judge of the District Court of Belgaum, in appeal No. 26 of 1879, amending the decree of Chinto Narayan, Subordinate Judge (Second Class) at Athni, in original suit No. 651 of 1878.

The plaintiff sued the defendant for Rs. 306 being principal and interest due on a mortgage bond executed by the defendant to the plaintiff on the 11th November 1873. The plaintiff prayed [294] for a decree for the amount to be realized by the sale of the mortgaged property.

The defendant admitted the execution of the bond, but pleaded part satisfaction of the debt.

The Subordinate Judge made a decree in favour of the plaintiff for Rs. 225, and dismissed his claim to the rest. He directed the amount decreed to be realized from the sale of the mortgaged property, if it were not paid by the defendant within six months from the date of the decree. He also awarded interest at six per cent. from date of decree to date of payment.

The plaintiff appealed for the amount disallowed by the first Court. The defendant neither appealed against the amount awarded, nor took objections to it under s. 348 of the Civil Procedure Code (Act VIII of 1859). The District Judge, however, held the plaintiff entitled to Rs. 56 only and amended the decree of the first Court accordingly.

The plaintiff appealed to the High Court against the decision of the District Judge.

Manekshah Jehangirshah, for the appellant contended that the District Judge was wrong in reducing the amount of the Subordinate Judge's decree without an appeal by the defendant against it and in an appeal by the plaintiff for the whole amount as originally claimed.

There was no appearance for the respondent.

JUDGMENT.

SARGENT, J.—As the defendant did not appeal against the amount found by the Subordinate Judge, it was not open to the District Judge to reduce it. The decree of the District Judge must, therefore, be reversed, and the decree of the Subordinate Judge restored. No order as to costs.

Decree reversed.

* Second Appeal, No. 417 of 1879.