

1881

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v.  
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1870, the proper court-fee, and that section 213 of Act X of 1877 has not any bearing upon the fiscal question as to the amount of court-fee. I am unable, however, to follow his argument; for, if the order, subject to be appealed against, be not, by force of section 213 of Act X of 1877, rendered substantially a decree in a suit within the meaning of the term "decree" in section 2 of the same Act, I cannot perceive what right of appeal the applicant can have. Chapter XLIII of that Act (which chapter regulates appeals from orders) does not give him any appeal in such a case as the present. It is only by assuming that the application may have been by section 215 declared to be a suit, and that the order falls within the term "decree" in section 2, and, is therefore, under section 540 of the same Act, open to appeal, that I can entertain the idea of an appeal in the present case. If, then, an appeal lie at all from the order of the District Judge (a point which I cannot now fully decide), I agree with the Taxing Officer in thinking that it would do so in virtue of sections 2, 213 and 540 of the Civil Procedure Code, and that the court-fee payable would be as in a suit for accounts under section 7, cl. iv (f), of Act VII of 1870, and should, therefore, be, as there pointed out, an *ad-valorem* fee—liable, in case of undervaluation, to correction under section 11 of that Act.

## APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice Pinhey.*

PATANKAR, PLAINTIFF, v. DEVJI, DEFENDANT.\*

1882  
January 24.

*Decree—Execution—Satisfaction or part satisfaction out of Court, but not certified—Subsequent execution of decree for full amount—Suit for money previously paid—Civil Procedure Code, X of 1877, Secs. 244-258—Limitation Act (XV of 1877), Sch. II, Art. 161.*

A suit for the recovery of money paid to a judgment-creditor out of Court in satisfaction of a decree, but not certified, is barred by section 244 (c) of Act X of 1877 and by the last paragraph of section 258 as amended by Act XII of 1879.

This was a reference by Rao Saheb Dhondo Janardan Karmarkar, Subordinate Judge of Junnar, under section 617 of the Code of Civil Procedure.

\*Civil Reference, No. 41 of 1881.

1882

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The defendant obtained a money decree against the plaintiff, and presented an application for its execution without deducting from the amount of his claim Rs. 21-12-0 paid out of Court in satisfaction of it. The plaintiff, therefore, now sued for the recovery of that sum from the defendant. The defendant denied the receipt of the sum, and contended that this suit was barred by sections 244 and 258 of the Code of Civil Procedure (X of 1877). The Subordinate Judge was of opinion that the suit would not lie, but he said that his opinion was not free from doubt; and as the suit fell within chapter 2 of the Dekkhan Agriculturists' Relief Act XVII of 1879, and as no appeal lay against the decision, he referred the case for the opinion of the High Court.

There was no appearance on either side in the High Court.

The judgment of the Court was delivered by

MELVILL, J.—The Court is of opinion that the view taken by the Subordinate Judge is correct. A suit for the recovery of money paid to a judgment-creditor out of Court, and not certified, appears to be barred by section 244 (c) of Act X of 1877 and by the last paragraph of section 258 as amended by Act XII of 1879.

The Court regrets to come to the conclusion that judgment-debtors have been thus deprived, by a change in the law, of a remedy against fraud which they previously possessed. The provision of section 258, which enables a judgment-debtor to apply for a notice to the decree-holder to show cause why payments made out of Court should not be recorded, is, in effect, rendered nugatory by the shortness of the period (twenty days from the date of payment), within which the Limitation Act requires that such an application should be made (art. 161, Sch. II, Act XV of 1877). The class of debtors, who make payments out of Court, consists of those who are too ignorant of the law to know the risk which they run in so doing; and the first intimation which they have of the fraud which has been perpetrated upon them is when the creditor proceeds to execute his decree without giving credit for the payments received. It is then too late for the debtor to apply to the Court; and, being deprived of the right to sue, he is left without any remedy.