

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

RANGJI, DECEASED, BY HIS SON, APPLICANT, *v.* BHA'JI HARJIVAN,
OPONENT.*

1886
July 22.

Civil Procedure Code (Act XIV of 1882), Secs. 257 A and 258—Adjustment of decrees more than three years old—Reference, under section 617, of a question arising under these sections.

On the 22nd March, 1886, the applicant presented an application to a Subordinate Judge, praying that the adjustment of certain decrees, dated the 28th March, 1867, and 11th July, 1871, might be certified, and a sanction granted to a *sankhat*, dated 18th March, 1880, passed to him by the defendant in satisfaction of the said decrees and in substitution of two bonds dated February, 1879. The Subordinate Judge, being of opinion that the application could not be granted, inasmuch as the execution of the decrees was then barred by limitation, referred the case to the High Court under section 617 of the Civil Procedure Code (Act XIV of 1882).

Held, that the question could not be referred under section 617 of the Civil Procedure Code (Act XIV of 1882), as the order applied for to the Subordinate Judge was appealable under section 2 of the Code. The question raised by the application related to the satisfaction of the decree within the meaning of section 244 of the Code.

THIS was a reference by Rāv Sāheb H. C. Satyavādi, Subordinate Judge of Anklesvar, under section 617 of the Civil Procedure Code (Act XIV of 1882).

Narbherām Rangji presented an application in Suit No. 291 of 1867, on the 22nd March, 1886, to the Subordinate Judge of Anklesvar to have the adjustment of the decree in the said suit certified, and requesting the sanction of the Court to a registered *sankhat*, dated the 18th March, 1880, passed to him by the defendant in satisfaction of the said decree, and of another decree in Suit No. 1391 of 1870, and in consideration of two bonds dated *Mahā Sudi* 1st, *Samvat* 1935 (February, 1879). The decrees thus satisfied, namely, those in Suits No. 291 of 1867 and No. 1391 of 1870, were, respectively, passed on the 28th March, 1867 and 11th July, 1871. So that the execution of the former decree was already barred under section 230 of Act X of 1877 at the date of the *sankhat*. The execution of both the decrees was barred at

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the date of the application under reference, both under section 230 of the Civil Procedure Code and under the Limitation Act.

The Subordinate Judge referred the following question to the High Court for its decision :—

Whether the application should be granted, and sanction accorded to the *sankhat* under the above circumstances ?

The opinion of the Subordinate Judge on the point was in the negative.

Shivrám Vithal Bhandárkár for the creditor:—It is the business of the judgment-creditor to move the Court to grant sanction to the adjustment of a decree made out of Court, and no time is fixed, within which he should apply for that purpose. The existence of separate sections clearly shows that an application to have adjustment of decree certified under section 257A or 258 is not to be regarded as one for execution of a decree, and an order passed under either of these sections would be final, and not appealable.

Ghanashám Nilkanth Nádkarni, contra :—The question raised by the application is one relating to execution of a decree under clause (c), section 244 of the Civil Procedure Code: see *Gházídin v. Fakir Bakhsh*⁽¹⁾. The order which the Court may pass under section 257A or 258 will be appealable. The Court, which is asked to certify the adjustment, will be a Court “executing the decree”—*Fakruddin v. The Official Trustee of Bengal*⁽²⁾. The case, therefore, could not be referred under section 617.

SARGENT, C. J.:—The question cannot be referred under section 617, as, in our opinion, whether the application of the 22nd March, 1886, be regarded as an application under section 257 A for the sanction of the Court, or to have the adjustment recorded as certified under section 258, the order which the Subordinate Judge may make will be appealable under section 2. The question raised on either view of the application relates to the satisfaction of the decrees mentioned in it; and although the “Court which passed the decree” has to decide the question of sanction under section 257A., it is none the less “executing the decree,” when

(1) I. L. R., 7 All., 73.

(2) I. L. R., 10 Calc., 538.

it does so, within the meaning of section 244. The Allahabad High Court takes the same view in dealing with an application under section 545 for stay of execution—*Gházíidin v. Fakir Baksh*⁽¹⁾.

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(1) I. L. R., 7 All., at p. 76.

CRIMINAL REFERENCE.

Before Mr. Justice West and Mr. Justice Nánabhái Haridás.

QUEEN-EMPRESS v. RAKMA' KOM SADHU.*

Indian Penal Code (Act XIV of 1860), Secs. 269 and 417, 420—Communicating syphilis by the act of sexual intercourse—Cheating.

1886.
September 30.

A prostitute, who while suffering from syphilis communicates the disease to a person who has sexual intercourse with her, is not liable to punishment under section 269 of the Indian Penal Code (Act XLV of 1860) "for a negligent act and one likely to spread infection of any disease dangerous to life."

Semle—She may be charged with cheating under section 417 or 420, if the intercourse was induced by any misrepresentation on her part.

THIS was a reference, under section 438 of the Criminal Procedure Code (Act X of 1882), by G. F. M. Grant, District Magistrate, Sátára.

The accused was a prostitute. She was charged with having communicated syphilis to the complainant, William Giffard, and was convicted, under section 269 of the Indian Penal Code, by Ráv Bahádur K. M. Thatte, Magistrate (First Class), for the reasons stated by him as follows:—

"It has been established that the prosecutor had sexual connexion with the prisoner alone, that she was suffering from primary syphilis dangerous to life on the date she had connection with the prosecutor, that she told the prosecutor that she was healthy, and that the prosecutor got the disease from her.

"The prisoner makes no defence, and admits that she did suffer from syphilis. She is found guilty."

* Criminal Reference, No. 103 of 1886