

1887.

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words to show a contrary intention, should, we think, on the ordinary principle of construction, be the one adopted. The circumstance relied on by the majority of the Allahabad Full Bench, that the words are identical in the third paragraph of section 230 of both the Codes, does not seem to us to affect the question of construction. The language is doubtless the same so far as they both speak of the law in force, but the periods to which they refer are different. Upon the whole, we agree with the view taken by the Calcutta Court, and we may add that this view has already been acted on by this High Court in *Dave Kálidás Bhukhanji v. Mia Aloo Jita*<sup>(1)</sup>. As there was here an application made and granted on the 29th July, 1881, i. e., under the Code of 1877, and twelve years would have elapsed before June, 1885, we must hold that the *darkhást* in question was not saved by the concluding clause of section 230 of the Code of 1882. We must, therefore, discharge the order of the District Judge, and declare that the *darkhást* is too late. Appellant to have his costs in the lower Courts.

(1) Printed Judgments for 1884, p. 66.

## FULL BENCH.

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

HARICHAND, PLAINTIFF, v. JIVNA SUBHANA, DEFENDANT.\*

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March 8.

Stamp—Court Fees' Act VII of 1870, Sch. I, Art. 8—Copies of originals returned to  
the party—Liability of such copies to stamp duty.

In the course of a suit the plaintiff put in evidence certain entries from his day-books and ledger. The books had been produced in Court, and had been returned to the plaintiff, as usual, on his furnishing copies of the said entries. The Subordinate Judge feeling doubt as to whether such copies should be furnished on stamped paper, referred the question to the High Court.

Held, that the original entries not having been in the hand-writing of the debtor, were not liable to stamp duty under Schedule 1, article 1 of the Stamp Act I of 1879, and that, therefore, the copies of them were not chargeable with any court fees under Schedule 1, article 8 of the Court Fees' Act VII of 1870.

\* Civil Reference, No. 47 of 1885.

REFERENCE by Ráv Sáheb Máneklál Narotamdás, Subordinate Judge of Mádha, under section 49 of the Stamp Act I of 1879.

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The plaintiff sought to recover Rs. 100 due on a bond dated 11th March, 1878. In the course of the trial he gave in evidence entries from his day-books and ledger, in order to satisfy the requirements of sections 12 to 14 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The original day-books and ledger were both produced and proved at the trial, and they were returned to the plaintiff as usual on his furnishing extracts from the same.

The Subordinate Judge referred the following question for the High Court's decision :—

Whether the extracts in question come under article 22, Schedule I of Act I of 1879 so as to render it obligatory on the plaintiff to furnish them on stamped papers ?

The Subordinate Judge's opinion was in the negative.

There was no appearance for the parties.

*PER CURIAM* :—The copies referred to by the Subordinate Judge are copies of certain entries in the creditor's ledgers and cash books for several years. The original account books containing those entries were produced, proved, and filed in Court. The original entries are not in the hand-writing of the debtor, and, therefore, not liable to any stamp duty, under the Indian Stamp Act, Schedule I, article 1. The account books were returned to the creditor under section 141, Civil Procedure Code (XIV of 1882) on his furnishing copies of those entries under his own hand. When so furnished, they were not certified "by or by order of any public officer," and, therefore, not chargeable with any stamp duty under the Indian Stamp Act (I of 1879), Schedule I, article 22. To ascertain their accuracy, the Clerk of the Court seems subsequently to have compared them with the original entries, and found them to be correct,—a fact which he has certified below them under his own hand and seal of the Court. Whether this renders them liable to payment of any court fee must depend upon the provisions of the Court Fees' Act (VII of 1870), Schedule I of that Act,

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article 8, shows that when a party to a suit withdraws an original document (as was done in this case), any copy he leaves of that document is chargeable under it only if the original withdrawn is itself liable to stamp duty under the General Stamp Act. As stated above, the original entries in this case are not so liable. Therefore the copies left by the creditor are not chargeable with any court fee under the Court Fees' Act, Schedule I, article 8.

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

1887.  
March 15.

A. P. RAJERA V CHANDRA'RA'O, (ORIGINAL PLAINTIFF AND DECREE-HOLDER), APPELLANT, v. NA'NA'RA'V KRISHNA JAHA'GIRDA'R, (ORIGINAL DEFENDANT AND JUDGMENT-DEBTOR), RESPONDENT.\*

*Execution of decree—Duty of a Court to which a decree is transferred for execution—Maintenance—Arrears of maintenance due to a Hindu widow at her death—Liability of such arrears to satisfy a decree against her assets.*

A Court, to which a decree has been sent for execution, cannot refuse execution on the ground that questions are raised between the parties that cannot properly be dealt with in execution.

Where sums due for a widow's maintenance have become a debt, such a debt should be regarded as assets of the widow after her death liable to be taken in execution of a decree against her.

A. sued upon a bond executed in his favour by R., a Hindu widow, and after her death obtained a decree against N., as her legal representative, directing "that the judgment-creditor should be satisfied out of such assets of the deceased widow as may in course of execution be proved to have come into the possession of the defendant N." A. sought, in execution, to obtain satisfaction out of arrears of an annuity due by N. to the deceased on account of her maintenance for fifteen years before her death.

The Subordinate Judge held that the right to recover these arrears was one personal to the widow R., and though it could be enforced by her, would not pass to her creditor. He, therefore, dismissed the *darbhast*.

*Held*, reversing the order of the Subordinate Judge, that the arrears of the annuity due by N. to R., as maintenance, were properly to be regarded as the assets of the widow, and, as such, were available in execution to satisfy the decree. N. owing money in his individual capacity to R., would, in the interest of creditors and justice, be assumed to have paid it to himself as her

\* Appeal, No. 101 of 1885.