

but also the retention of the attachment to such extent as the Court thinks fit. His right should, therefore, have been established by suit within a year. We must, therefore, reverse the decree of the Court below, and restore that of the Subordinate Judge. Costs on defendant throughout.

Decree reversed.

12 B. 235.

APPELLATE CIVIL.

Before Mr. Justice Nanabhai Haridas and Mr. Justice Jardine.

BALAJI LAKSHMAN (*Plaintiff*) v. DADA JOTI (*Defendant*).^{*}
[24th November, 1887.]

Civil Procedure Code (Act XIV of 1882), s. 258—Decree—Satisfaction of decree out of Court—Payment uncertified—Suit to recover money paid in satisfaction of decree.

The plaintiff had been a surety for the defendant on a bond for Rs. 50 passed to G. by the defendant. G. obtained a decree against the plaintiff on this bond, and the plaintiff satisfied the decree by paying G. Rs. 38 in full satisfaction. The payment was made out of Court, and was not certified to the Court. The plaintiff now sued the defendant to recover the money so paid by him to G. He called G. as a witness, who acknowledged he had received Rs. 38 from the plaintiff in full satisfaction of the decree.

[236] *Held*, that the last clause of s. 258 of the Civil Procedure Code (Act XIV of 1882) did not apply to such a case, and that the payment made by the plaintiff to G. might be proved.

THIS was a reference, by Rav Saheb Damodhar Kacheshwar Dhodapkar, Joint Subordinate Judge of Sholapur, under s. 617 of the Civil Procedure Code (Act XIV of 1882). The reference was as follows:—

“The plaintiff Balaji Lakshman stood surety for the defendant Dada under a bond for Rs. 50 passed by the latter to one Ganpatsing valad Gulabsing. Ganpatsing obtained a decree, No. 538 of 1886, upon this bond against the plaintiff Balaji in the Court of the First Class Subordinate Judge of Sholapur for Rs. 34-0-8 and costs in June, 1886. The plaintiff Balaji satisfied the decree by paying to the decree-holder Ganpatsing Rs. 38 in full satisfaction of the same. This payment was made out of Court, and was not certified to it by the decree-holder Ganpatsing. Ganpatsing, who had been called for the plaintiff in this case, acknowledged having received Rs. 38 from the plaintiff Balaji in full satisfaction of his decree.”

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

Whether the prohibition against the recognition of an uncertified payment or adjustment, contained in the concluding para. of s. 258 of the Civil Procedure Code, applies to this case?

The Subordinate Judge's opinion on the point was in the negative.

Shivram Vithal Bhandarkar, for the plaintiff.—Section 258 of the Civil Procedure Code (Act XIV of 1882) forbids recognition of any satisfaction of decree not certified between parties to the suit. The plaintiff was a surety for the defendant, and this suit is for money paid for the use of the defendant. No certificate is necessary: see *Pat Dasi v. Sharup*

^{*} Civil Reference, No. 34 of 1887.

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Chund (1). The decree-holder testifies to the payment, and his receipt, supported by his personal acknowledgment, can be proved "as a fact": see *Haji Abdul Rahiman v. Khoja Khaki Aruth* (2).

[237] *Goverdhanram Madhavaram*, for the defendant, relied on *Haji Abdul Rahiman v. Khoja Khaki Aruth* (2), and contended that the payment could not be recognized.

OPINION.

NANABHAI HARIDAS, J.—We are of opinion that the Subordinate Judge is right in holding that the last clause of s. 258 of the Civil Procedure Code (Act XIV of 1882) does not apply to this case. The payment of Rs. 38 by Balaji to Ganpatsing can be proved as a fact by the evidence of Ganpatsing supported by his receipt (Ex. 3) for such payment. See *Haji Abdul Rahiman v. Khoja Khaki Aruth* (3). The Subordinate Judge to be informed accordingly.

12 B. 237.

ADMIRALTY JURISDICTION.

Before Mr. Justice Farran.

THE BOMBAY AND PERSIA STEAM NAVIGATION COMPANY, LIMITED
(Plaintiffs) v. MESSRS. SHEPHERD AND HAJI ISMAIL HOSSEIN,
(Defendants).* [1st February, 1887.]

Practice—Parties—Suit originally against owners—Amendment of plaint—Ship added as party defendant.

In a suit for collision originally filed against the owners of a ship,
Held, that the plaintiffs might amend the plaint by adding the ship as a party defendant.

APPLICATION in Chambers.—The plaintiffs sued the defendants to recover Rs. 50,000 as damages for loss sustained by them by reason of a collision which took place on the 18th December, 1886, between the plaintiffs' steamship "King Arthur" and the defendants' steamship "Zuari." The plaintiffs alleged that the collision was caused solely by the fault of the "Zuari" and those on board of her, and was not occasioned by the fault of the "King Arthur." The defendants' ship the "Zuari" was sunk by the collision. This suit was filed against her owners on the 21st December, 1886.

The "Zuari" was subsequently floated, and on the 25th January, 1887, the plaintiffs applied for leave to amend the plaint by adding the ship "Zuari" as a joint-defendant in the suit.

[238] *Chalk*, for the defendants, objected.—The plaintiffs filed their suit three days after the collision, and elected to proceed *in personam* against the owners, and not against the ship. They now seek to change the nature of this suit by making it an action *in rem*. The written statement of the defendants has been prepared. The plaint cannot now be amended. He referred to Coote's Admiralty Practice, p. 23 (2nd ed.).

Inverarity, contra:—He cited *The Zephyr* (4).

* Admiralty Suit No. 7 of 1886.

(1) 14 C. 376.

(3) 11 B. 13, 15, 19, 23, 36.

(2) 11 B. 26.

(4) 11 Law Times, N.S. 351.