

1888

FEB. 7.

APPEL-
LATE
CIVIL.

12 B. 279.

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*Before Mr. Justice Nanabhai Haridas and Mr. Justice Jardine.*MUSAJI ABDULLA AND ANOTHER (*Original Defendants*), Appellants
v. DAMODARDAS (*Original Plaintiff*), Respondent.*

[7th February, 1888.]

Practice—Appeal—Civil Procedure Code (Act XIV of 1882), ss. 545, 244 (cl. 3), 588 and 2—Order rejecting stay of execution appealable.

An order by a District Judge under s. 545 of the Civil Procedure Code (Act XIV of 1882), refusing to stay execution is a decree as defined in s. 2, and is therefore appealable.

[F., 1 O.C.102 (103) ; R., 14 C.L.J. 489 = 12 Ind. Cas. 745 ; 2 S.L.R. 24 ; Doubted, 29 B. 71.]

THIS was an appeal from a decision of S. Hammick, District Judge of Surat.

The plaintiff obtained a decree against the defendant. The latter appealed. The plaintiff having applied for execution, the defendant applied for a stay of execution pending the appeal. The District Judge being, however, of opinion that no substantial loss would result to the appellants if execution were proceeded with, ordered execution to issue.

From this order the defendants appealed to the High Court.

Shantaram Narayan, for the respondent, raised a preliminary objection that no appeal lay from such an order. This order is not a decree, and it is an order of a Court not executing the decree, and, therefore, not one within s. 244 of Civil Procedure Code (Act XIV of 1882). No appeal will therefore lie.[280] *Manekshah Jehangir Shah*, for the appellants, cited *O. Steel and Co. v. Ichchamcyi* (1) ; *Kristomohiny Dossee v. Bama Churn Nag* (2) ; *Luchmeeput Singh v. Sita Nath Doss* (3) ; *Mahant Ishwargar v. Chudasama* (4).

JUDGMENT.

NANABHAI HARIDAS, J.—We think an appeal lies in this case. The order of the District Judge under s. 545, Civil Procedure Code, is one determining a "question.....referred to in s. 244" (cl. 3), and one "not specified in s. 588," Civil Procedure Code. It is, therefore, a "decree" as defined in s. 2, Civil Procedure Code.

[The hearing of the appeal was then proceeded with, and, on the merits, the decree of the District Judge was confirmed with costs.]

* Appeal, No. 82 of 1887.

(1) 13 C. 111.

(2) 7 C. 733.

(3) 8 C. 477.

(4) 12 B. 30.