

## APPELLATE CIVIL.

*Before Mr. Justice Candy and Mr. Justice Crowe.*

JANARDAN (ORIGINAL DEFENDANT), APPELLANT AND APPLICANTS, v.  
NILKANTH AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS AND  
OPPONENT.\*

1901.

February 7.

*Practice—Decree—Execution—Stay of execution—Civil Procedure Code  
(Act XIV of 1882), sections 545 and 546.*

An appellate Court cannot pass an order under section 546 of the Civil Procedure Code (Act XIV of 1882) for a stay of execution of a decree under appeal until an order has been made for the execution of the decree.

THE defendant Janardan Govind presented an appeal against the decree of the First Class Subordinate Judge of Belgaum to the High Court. After the admission of the appeal he applied to the High Court, under section 545 of the Civil Procedure Code (Act XIV of 1882), for a stay of the execution of the lower Court's decree pending the disposal of the appeal, on the grounds (1) that three of the respondents were residents of the Native State of Sāngli and had very little property in British India, and (2) that all the respondents were so involved in debt that it would be difficult to recover the decretal amount from them in case the decree of the lower Court were reversed.

*A rule nisi* having been issued,

*B. A. Bhagvat* showed cause.

*M. V. Bhat* contra.

CANDY, J. :—This application was made under section 545 of the Civil Procedure Code. It is not alleged that any order has been made for the execution of the decree; therefore no order can be passed under section 546 of the Civil Procedure Code. We discharge the rule with costs.

*Rule discharged.*

\* Civil Application No. 421 of 1900.