

by setting aside the order of the District Magistrate and restoring that of the trying Magistrate.

HEATON, J.:—I concur in the order proposed. This is a case which, it seems to me, is governed by section 520 of the Code of Criminal Procedure. That section, to my mind, is perfectly clear and its meaning is this: that where the case is one in which an appeal lies, any party aggrieved by an order as to the disposal of the property must go to the Court of appeal. Where the case is one where confirmation is required, he must go to the Court of confirmation; where it is neither the one nor the other, he may go to the Court of reference or revision. Here the case is one in which an appeal lay, and, therefore, it seems to me that the only Court which could deal with the order regarding the disposal of the property under section 520 is the Court of appeal; in this case the Court of Session. Therefore the order made by District Magistrate was made without jurisdiction.

Order set aside.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

THE COLLECTOR OF AHMEDABAD (ORIGINAL APPLICANT), APPELLANT,
v. LAVJI MULJI (ORIGINAL OPPONENT), RESPONDENT.*

1911.

February 9.

Civil Procedure Code (Act V of 1908), section 144—Decree—Interest, award of—Discretion of Court—Land Acquisition Act (I of 1894)—Court determining the amount of compensation—Payment of the amount to claimant—Subsequent reduction in amount on appeal—Interest over the excess—Inherent powers of the Court.

A sum of money by way of compensation awarded under the Land Acquisition Act (I of 1894) and paid into Court was taken out by the claimant. Subsequently on appeal, the High Court reduced the amount of compensation payable to him, but made no order as to interest. Government then applied to recover from the claimant interest over the excess drawn by the claimant from the Court.

* First Appeal No. 150 of 1910.

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Held, that the interest claimed should be awarded, inasmuch as the claimant had had the benefit of the money belonging to Government in excess of that to which the High Court held him to be entitled, and the benefit was represented not only by the excess wrongly taken by the claimant from the District Court but also the amount of interest which the excess carried.

Mookoond Lal Pal v. Mahomed Sami Meah(1) and *Govind Vaman v. Sakharam Ramchandra*(2), referred to.

APPEAL from the decision of Dayaram Gidumal, District Judge of Ahmedabad, in Darkhast No. 12 of 1910.

Execution proceedings.

In a proceeding under the Land Acquisition Act, 1894, the District Court awarded to the claimant Rs. 1,650-4-0 as compensation for lands compulsorily acquired from him by Government. The amount was deposited in Court on the 8th July 1908; and it was paid over to the claimant.

Government appealed to the High Court against the award. The High Court reduced the amount of compensation to Rs. 1,112-3-9; it ordered each party to bear his own costs in appeal.

On the 19th April 1910, Government applied to recover the amount paid to the claimant in excess and interest at six per cent. on the excess amount from the 9th July 1908 to the 19th April 1910.

The District Judge declined to award interest on the ground that the High Court had passed no order as to interest and it was the discretion of the Court to pass any orders as to interest.

Government appealed to the High Court.

G. S. Rao, Government Pleader, for the appellant, referred to *Ram Coomar Coondco v. Chunder Canto Mookerjee*(3); *Rodger v. The Compliceir D'Escompte de Paris*(4).

N. K. Mehta for the respondent:—The lower Court had no power to entertain the *darkhast* for the execution of the award. As soon as an award is made, the Court making it is *functus officio*: see *Nilkanth v. Collector of Thana*(5), and the only remedy

(1) (1887) 14 Cal. 481 at p. 436.

(3) (1876) L. R. 4 I. A. 23 at p. 46.

(2) (1878) 3 Ecm. 42.

(4) (1871) L. R. 3 P. C. 465.

(5) (1897) 22 Bom. 802.

to enforce it is by a separate suit: see Article 17 of the Limitation Act (IX of 1908); and *Abu Bakar v. Peary Mohan Mukerjee*⁽¹⁾.

On merits, Government are not entitled to any interest as they were not bound to deposit money if they wanted to appeal.

CHANDAVARKAR, J.:—The question for determination in this case is whether interest ought to be allowed to Government on the moneys which, having been deposited by them in the District Court, were withdrawn by the claimant under the award in his favour made by that Court under the Land Acquisition Act but reversed in appeal by this High Court. The learned District Judge has held that Government are not entitled to interest on the ground that the award of interest is in the discretion of the Court, and that, having regard to the decision of this Court which, in reversing the award of the District Court, directed each party in the acquisition proceedings to bear his own costs, it must be presumed that this Court did not intend the sum wrongly withdrawn by the claimant to carry interest with it. Undoubtedly the award of interest is, generally speaking, a matter of the Court's discretion, except where by law it is made obligatory. And the question is whether, in the circumstances of the present case, it is reasonable to award interest. It is a rule of law that, where a party has wrongly taken from the Court moneys deposited in Court by his opponent, that Court has inherent power to enforce a refund of the amount with interest: see *Mookoond Lal Pal v. Mahomed Sami Meah*⁽²⁾ and *Govind Vaman v. Sakharam Ramchandra*⁽³⁾. In the present case the amount which was deposited with the Court by Government was taken away by the respondent, because that amount had been settled by that Court to be the amount of compensation to which the respondent was entitled under the Land Acquisition Act. The High Court in appeal reduced the amount to which the respondent was entitled. Under these circumstances the respondent must be held to have had the benefit of the money belonging to Government in excess of that to which the High Court held him entitled. That benefit is represented not

(1) (1907) 34 Cal. 451.

(2) (1887) 14 Cal. 484 at p. 486.

(3) (1878) 3 Bom. 42.

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only by the excess amount wrongly taken by the respondent from the District Court but also by the amount of interest which it carried with it.

It was urged before us that this being the case of an award under the Land Acquisition Act and not a decree, the right of restitution claimed by Government cannot rest on the section of the Code of Civil Procedure which allows a refund of moneys received by a judgment-creditor under a decree subsequently reversed or amended. But assuming that the Code does not apply, the decisions above cited show that the right rests on the inherent power of the Court to enforce the refund.

The order of the District Judge disallowing interest is set aside and Rs. 57-5-4 is awarded to Government as interest on the amount of Rs. 538-0-3.

The respondent must pay the costs both of this appeal and of the *darhkāst* in the Court below.

Order set aside.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1911.
 February 10.

GURUNATH BALAJI MUTALIK DESHPANDE (ORIGINAL PLAINTIFF),
 APPELLANT, v. YAMANAVA KOM NALARAV DIVAN (ORIGINAL
 DEFENDANT), RESPONDENT.*

Sale with an option of re-purchase—Suit by vendor's grandson against the vendee's daughter-in-law—Covenant to re-purchase purely personal.

A deed of sale with an option of re-purchase contained the following clause:—"I have given the land into your possession; if perhaps at any time I require back the land I will pay you the aforesaid Rs. 600 and any money you may have spent on bringing the land into good condition and purchase back the land."

In a suit brought 35 years after execution of the deed by the grandson of the vendor against the daughter-in-law of the vendee to exercise the option of re-purchase,

* Second Appeal No. 677 of 1909.