

1928.

J. C. GALSTAUN

v.

SAHEBZADI
MAMOUDI
BEGUM.

RANKIN C. J.

either by arrangement or rescission or impossibility of performance or refusal the plaintiff's right to sue for the return of the money arose. It will be for the Small Cause Court to apply these principles to the facts of this case.

Let the case be returned to the Small Cause Court with this expression of opinion.

B. B. GHOSE J. I agree.

S. M.

CRIMINAL REFERENCE.

Before C. C. Ghose and Jack JJ.

EMPEROR

v.

AHAMMAD SHEIKH.*

1928.

July 19.

Attachment—Option to be given to the judgment-debtor for the custody of attached moveables—General Rules and Circular Orders of the High Court, r. 93—Penal Code (Act XLV of 1860), ss. 183, 147.

Rule 93 of Chapter I of the High Court's General Rules and Circular Orders (Civil) as now amended (which provides that the attaching officer shall give the debtor or, in his absence, any present adult member of his family, the option of having the attached property kept on his premises or in some other place in the village, on condition that a suitable place for its safe custody be provided by him) has now the force of law.

A judgment-debtor and his men who retook certain attached properties removed by a civil court peon from the house of the judgment-debtor, who had not been given the option contemplated by Rule 93, were acquitted of offences under sections 183 and 147 of the Indian Penal Code.

REFERENCE by the Sessions Judge of Khulna.

The case for the prosecution *inter alia* was that on the 5th December, 1927, a peon of the civil court went to execute a warrant of attachment of moveable property against one Ahammad Sheikh, the judgment-debtor. The peon attached certain properties which he removed to a river *ghat* about 7 or 8 *rasis* from the house of the judgment-debtor, who, thereupon, with

* Criminal Reference, No. 117 of 1928, made by W. McC. Sharpe, Sessions Judge of Khulna.

the help of the other accused persons, forcibly took away the attached properties from the custody of the peon.

The case for the defence was that there was no attachment at all but the men of the decree-holder's party attempted to remove the properties stealthily before dawn. They further contended that in any case the attachment and the removal were not legal and hence no offence was committed. The trial court convicted the accused persons under sections 183 and 147 of the Indian Penal Code. They moved the learned Sessions Judge of Khulna to make a Reference to the Honourable High Court. In making a Reference and recommending that convictions and sentences imposed by the trial court be set aside, the learned Judge observed that he agreed with the trial court in finding that the story set up by the defence about attempted removal of the properties before dawn was false, that the attachment effected by the peon was legal and that the properties were forcibly taken away by the accused persons from the river *ghat*. But he was of opinion that Rule 93 of Chapter I of the High Court's General Rules and Circular Orders (Civil) which laid down,

"The attaching officer shall give the debtor, or, in his absence, any present adult member of his family, the option of having the attached property kept on his premises or in some other place in the village, on condition that a suitable place for its safe custody be provided by him"

and which had the force of law, had not been complied with and hence the accused persons could not be convicted under sections 183 and 147 of the Indian Penal Code.

Mr. Kshitish Chandra Chakrabarti (with him *Mr. Panchanan Ghosal*), in support of the Reference.

Mr. Prabodh Chandra Chatterjee (with him *Mr. Satyendra Chandra Sen*), for the complainant.

C. C. GHOSE AND JACK J.J. We have caused enquiries to be made and it appears that Rule 93 on page 31, Chapter I, of the High Court's General Rules and Circular Orders (Civil), as now amended, was

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made by the High Court and sanctioned by the Government of India under section 107 of the Government of India Act. It would, therefore, follow that this Rule has now the force of law. In that view of the matter, we think that the reasons given by the learned Sessions Judge of Khulna in his letter of Reference are sound, and we, therefore, accept the Reference, set aside the conviction and the sentences referred to therein and direct that the fines, if paid, be refunded.

A. C. R. C.

Reference accepted.

APPELLATE CIVIL.

Before Rankin C. J. and Page J.

FARIDPUR LOAN OFFICE, LIMITED.

1928.
 July 23.

v.

NIRODE KRISHNA RAY.*

Landlord and Tenant—Co-tenants—Representation—Effect of a sale in execution of a decree in which all co-tenants, including purchaser of share of one co-tenant, were not parties.

In a suit for rent, all the recorded tenants were impleaded; the purchaser of the interest of one of the co-tenants was not impleaded. There was no evidence in the case that the purchaser expressly represented to the landlord that the other co-tenants who were sued represented the entire tenure including the share that he had purchased, nor was there any evidence of his knowledge of proceedings for enhancement of rent subsequent to his purchase and before the rent suit.

Held that the interest of the defendant judgment-debtors only passed by the sale in execution of the decree in the suit for rent and the interest of the purchaser of the interest of one of the co-tenants remained unaffected.

APPEAL FROM APPELLATE DECREE on behalf of the plaintiff.

The appeal arose out of a suit for the establishment of the plaintiff's title to a third share of the

*Appeal from Appellate Decree, No. 1368 of 1926, against the decree of Gopal Das Ghosh, Subordinate Judge of Faridpur, dated Mar. 23, 1926, affirming the decree of Ashutosh Roy, Munsif of Faridpur, dated Dec. 21, 1925.