

apply that law to the present case. And the decree will be for the principal and a sum for interest equal to the principal—in all Rs. 800, without costs (1).

1880

RAMCONNOY  
AUDIGARRY  
v.  
JOUR LALL  
DUTT.

*Judgment for plaintiff.*

Attorney for the plaintiff: Baboo Sita Nath Dass.

*Before Mr. Justice Wilson.*

GREESH CHUNDER SEIN v. GUDADHUR GHOSE.\*

1880  
July 19.

*Assignment of Decree—Claim of Attaching Creditor—Assignee's incomplete equitable Title.*

A brought a suit against B, which was dismissed with costs. A subsequently brought a suit against C, in which he obtained an *ex parte* decree, and assigned his interest under the decree to D and E. D and E neglected to have their names substituted for that of A on the record. C applied for and obtained an order, setting aside the *ex parte* decree, and allowing him to come in and defend the suit on deposit in Court of the sum sued for. At the rehearing, the suit was again determined in favor of A. B thereupon, in execution of his decree for costs, attached the moneys in the hands of the Court in the suit of A against C. D and E obtained an *ad interim* injunction restraining B from meddling with the money, and put in their claim under the assignment. Held, that the incomplete equitable title of D and E could not prevail against the right of B, the attaching creditor."

ONE Greesh Chunder Sein instituted against Gudadhur Ghose and Ram Chunder Singh, in 1876, a suit to set aside a decree obtained by Gudadhur against Ram Chunder Singh; on the ground that such decree was fraudulent and deprived him (Greesh Chunder) of his rights against Ram Chunder Singh. This suit was dismissed with costs, and the judgment affirmed on appeal.

On the 30th August 1879, Greesh Chunder Sein brought a suit against one Obhoy Churn Mullick to recover Rs. 1,423, and on the 17th November obtained against him an *ex parte* decree. Greesh Chunder, on the 2nd December 1879, assigned by deed his interest in such decree to Sultan Chand and Normul for Rs. 940.

\* Motion in Suit No. 320 of 1876.

(1) See also *Hakma Manji v. Meman Ayab Haje*, 7 Bom. H. C., O. O., 19.

1880

GREESH  
CHUNDER SEIN  
v.  
GUDADHUR  
GHOSE,

The words of the assignment were as follows :—" All that the said sum of Rs. 1,423 secured by the said recited decree, and all interest now due, and hereafter to become due for the same, and also the said decree and the full benefit and advantage thereof, save and except the costs recoverable under the said decree, and of all other securities for the same sum and interest, and all estate, right, title and interest, claim and demand of the said Greesh Chunder Sein therein."

On the 11th February, 1880, Obhoy Churn applied to the Court for leave to defend the suit, and the application was granted, subject to his paying the amount sued for, together with all costs incurred, to the Registrar. On the 23rd March the suit was reheard, and was determined in favor of the plaintiff.

On the 23rd April, Gudadhur Ghose (one of the defendants in the first above-mentioned suit), not having been able to obtain execution of his decree for costs, applied for the attachment of the money deposited with the Registrar in the suit of Greesh Chunder Sein v. Obhoy Churn Mullick. An order granting the attachment was made, leave being granted to Greesh Chunder to show cause against the rule within one week's time. On the 20th May the rule came on for hearing, and was made absolute.

On the 5th July Sooltan Chand and Normul applied for and obtained a rule *visi*, restraining Gudadhur Ghose from receiving the money standing in Court to the credit of the suit of Greesh Chunder Sein v. Obhoy Churn Mullick, until the claim of the applicants, Sooltan Chand and Normul, should be determined by the Court. The claim came on for hearing on the 19th July.

Mr. T. A. Apar, for the claimants Sooltan Chand and Normul, contended, that the words in the assignment of the 2nd December 1879 were sufficiently large to cover the sum decreed in the defended suit. [WILSON, J.—But you have not had your name substituted on the record for that of Greesh Chunder Sein, this should have been done either under s. 232 or s. 372.]

Mr. Phillips for Gudadhur Ghose was not called upon.

WILSON, J.—Possibly Mr. Apar's client has an incomplete

equitable title, but this cannot prevail against the title of the attaching creditor. I, therefore, dismiss the claim with costs.

1880  
 GREENII  
 CHUNDER SEIN  
 v.  
 GUDADHUR  
 GHOSH.

*Claim disallowed.*

Attorneys for the claimants: Messrs. *Wheeler* and *Sowton*.

Attorney for the attaching creditor: Baboo *Bhoobonmohun Dass*.

## APPELLATE CRIMINAL.

*Before Mr. Justice Morris and Mr. Justice Prinsep.*

THE GOVERNMENT OF BENGAL v. MAHADDI AND ANOTHER.\*

1880  
 May 20.

*Verdict on Offence proved though not independently charged—Unanimous Verdict—Dissent of Judge—Procedure in such cases—Code of Criminal Procedure (Act X of 1872), ss. 263, 457—Penal Code (Act XLV of 1860), ss. 149, 325.*

The accused were charged under s. 149, coupled with s. 325, of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt under s. 325.

*Held*, that such verdict was, under s. 457 of the Code of Criminal Procedure, legally sustainable, although that offence did not form the subject of a separate charge. Section 457 enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence.

It is only in a case where the jury are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge, unless contrary to law.

Where a Judge dissents from the unanimous finding of a jury given in accordance with the law, the only procedure open to him to follow is that laid down in the fifth clause of s. 263 of the Code of Criminal Procedure.

THIS was an appeal directed by the Local Government under s. 272 of the Code of Criminal Procedure, from a verdict of acquittal.

\* Criminal Appeal, No. 1 of 1880, against the order of R. F. Rampini, Esq., Officiating Sessions Judge of Dacca, dated the 15th October 1879.