

BURGESS
v.
SIDDEN.

“ The parties to this petition are five in number, all resident beyond the jurisdiction of this Court.

“ The petition was presented to me by fifth petitioner only in person ; the said fifth petitioner produced no authority authorizing him to appear and act for the other petitioners, but vakaluts were put in with the petition by which 1, 2, 3 and 5 petitioners empowered Messrs. Cowdell and Co., Solicitors at Ootacamund, to appear for them, together with a power of attorney by which petitioner No. 4 apparently authorized petitioner No. 1 to act for her in recovering the moneys alleged to be due to petitioners by the representatives of the late Mr. Sidden.”

Counsel were not instructed.

The Court (Kernan and Brandt, JJ.) delivered the following

JUDGMENT :—An application to sue as a pauper must be made to the Court by the applicant in person, unless he is exempted under s. 640 or 641 from appearing in Court (which is not the case here), and it is only in the case of persons so exempted that the application may be presented by a duly authorized agent.

The mere fact that several pauper applicants jointly present an application cannot authorize the Court to entertain it on behalf of applicants who do not appear in person.

The application in this case was not presented on behalf of the petitioners who did not appear by an agent duly authorized to appear under s. 404, and therefore the provisions of s. 406 do not apply.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Brandt.

SÍRIAH AND OTHERS (PLAINTIFFS),

and

MÚCKANÁCHÁRY AND OTHERS (DEFENDANTS).*

Civil Procedure Code, ss. 268, 284, 287 (e), 301—Attachment of a debt due to a Judgment-debtor—Sale of debt—Payment into Court—Prohibitory order.

A decree-holder by a prohibitory order made under s. 268 (α) of the Civil Procedure Code attached a debt due to his judgment-debtor. The debt was not paid into Court :

* Referred Case 11 of 1868.

Held, that the Court cannot, under s. 268, of the Code of Civil Procedure, call on a person subject to a prohibitory order to pay or show cause why he should not pay his debt into Court. The Court is bound to satisfy itself that a debt is due, the debt must then be sold and delivery made under ss. 284 and 301 of the Code of Civil Procedure.

THIS was a case referred for the orders of the High Court under s. 617 of the Code of Civil Procedure by W. E. T. Clarke, Subordinate Judge, Nilgiris.

The facts were stated as follows :—

“In the execution proceedings connected with original suit No. 79 of 1885 on the file of the High Court of Judicature at Madras, the decree in which was referred to this Court for execution, the judgment-creditor under s. 268, cl. (a) of the Code of Civil Procedure attached certain debts said to be due by various persons to his judgment-debtor; this Court issued notice to the several alleged debtors, calling on them to show cause (if any) why their debts should not be paid into Court. In answer to such notices, the alleged debtors appeared before this Court; some of them admitted their debts to be due, others said they had owed debts but had paid their amounts, and one said it depended on a settlement of accounts between the judgment-debtor and himself whether he owed anything to the said judgment-debtor or not.”

Sundaram Sastryar for plaintiffs.

Mr. Rámasámi Ráju for defendants.

The Court (Kernan and Brandt, JJ.) delivered the following

JUDGMENT :—The first question referred for our decision is—“Whether a Court is not justified under s. 268 in issuing a notice to a garnishee, as he is styled by the Subordinate Judge, to show cause why he should not pay his debt into Court, seeing that it has power to make further orders under that section ?”

The Court has not power under s. 268 of the Code of Civil Procedure to call upon a person warned by the Court not to make payment to his creditor to show cause why he should not pay his debts into Court: under the section above quoted it is optional with the debtor to pay the amount of his debt into Court. But under s. 287 (e) the Court executing the decree has power to summon any person whom it thinks necessary, in order to ascertain, among other things, the nature and value of the property; and we concur with the Bombay High Court—*Harilál Amthabhai*

SIRIAH
2.
MUCKANÁ-
GHÁRY.

v. *Abhesang Meru* (1)—in considering that if there is notice or reasonable cause to suppose that there is no debt due, the Court not only can, but ought to satisfy itself on the point.

The second question is: "Whether if as the result of an inquiry held under s. 287 a Court finds either that a garnishee admits a debt or that it is proved to be due by him to the judgment-debtor, a Court is imperatively bound to put such debt up for sale, or whether it may order the same to be paid into Court by the garnishee instead of proceeding to sell it?"

If the Court is satisfied that there is a subsisting debt, the debt must be sold (s. 284); and delivery is to be made under s. 301. Under s. 268 the debtor may pay the amount of his debt into Court, but the code does not empower the Court to compel the debtor to pay the money into Court, while it does expressly provide for the mode in which sale and delivery of the debt attached is to be made. A power to compel the debtor to pay the amount of his debt into Court cannot be imported by reason of greater convenience of the course suggested by the Subordinate Judge, nor from the fact that such a course is not expressly forbidden by the code.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

CHEKKONEKUTTI AND ANOTHER (PLAINTIFFS), APPELLANTS,

and

AHMED AND OTHERS (DEFENDANTS), RESPONDENTS.*

Mupillas—Muhammadan Law—Gift to take effect at an indefinite future time.

Gifts to take effect at an indefinite future time are void under Muhammadan law.

THIS was a suit for a declaration of the plaintiffs' title to certain property under a deed of gift. By that deed Ahmed Haji, a Mapilla, conveyed the land in question to his wife, Mama, for life, and after her death to his daughter, Pathuma, and children born to her. Pathuma had no issue at the date of the deed, but subsequently had two children, the plaintiffs in this suit. She

(1) I.L.R., 4 Bom., 323.

* Second Appeal 454 of 1886.