

ORIGINAL CIVIL.

Before Mr. Justice Shephard.

ABDUL LATEEF

v.

DOUTRE.*

1889.
March 13.*Civil Procedure Code, s. 2, 268, 272—Official Trustees' Act (XVII of 1864)—Public officer—Attachment by notice.*

A decree against a married woman provided that the amount due under it should be payable out of the separate estate of the judgment-debtor. The judgment-debtor was entitled to a life-interest in certain trust funds under a settlement of which the Official Trustee was the trustee. The decree-holder proceeded to execute his decree against this life-interest by notice to the Official Trustee under s. 272 of the Code of Civil Procedure, but there were no funds in the hands of the Official Trustee which would have been attachable under s. 268. The decree-holder now applied that the life-interest might be sold:

Held, that the interest of the judgment-debtor was not validly attached.

Seemle: The Official Trustee is a public officer within the meaning of s. 2 of the Civil Procedure Code.

APPLICATION for the sale, in execution of a decree for Rs. 1,170, of the life-interest of a judgment-debtor under a post-nuptial settlement, dated 19th September 1873, of which the Official Trustee of Madras was the trustee.

The decree sought to be executed as above was passed in a suit brought by Abdul Lateef upon a promissory note, dated 27th January 1879, against Mrs. Doutre, the defendant, and the decree provided that the said amount should be payable from and out of the separate estate of the judgment-debtor.

By the post-nuptial settlement, referred to above, it was provided, *inter alia*, that the income of certain trust funds should be paid to Mrs. Doutre for her sole and separate use without power of anticipation by her, and the Official Trustee of Madras was appointed trustee of the settlement. The husband died on 30th July 1886. On 26th November 1886 Mrs. Doutre borrowed from Venkatesa Chetti the sum of Rs. 3,000 and as security for the loan executed to him an instrument charging her life-interest

* Civil Suit No. 55 of 1882.

under the above settlement, and gave him a power-of-attorney to receive the income of the trust funds from the Official Trustee. The instrument of charge and the power-of-attorney were duly presented to and registered by the Official Trustee. On 15th January 1889 the decree-holder proceeded to execute his decree under s. 272 of the Civil Procedure Code by attachment of the judgment-debtor's interest in the trust funds above referred to, and served notice as provided in that section on the Official Trustee. There were no funds in the hands of the Official Trustee which would have been available for attachment under s. 268.

Mr. *W. Grant* now moved for an order to sell the interest of the judgment-debtor as above.

The Official Trustee (Mr. Wedderburn) contra.

The attachment by notice is bad, for the Official Trustee is not a public officer. He can only be appointed trustee with his consent (Act XVII of 1864, ss. 8, 10), and his duties are not public, but private; and he is governed by the terms of The Married Woman's Property Act—Act III of 1874—of which s. 6 only creates an exception. In the present case the Official Trustee was appointed trustee of the defendant's marriage settlement by deed. In *Shahbezadee Shahunshah Begum v. Fergusson*(1) the question was merely whether the Official Trustee was entitled to notice of suit and it was not necessary to decide the present question, for whether he was a public officer or not, he was not entitled to notice in that case. If the order sought is granted it must be made, subject to the powers of advancement for children, &c., contained in the deed.

The further arguments adduced in this case appear sufficiently for the purpose of this report from the judgment of Mr. Justice Shephard.

JUDGMENT.—The decree-holder, having obtained an order which purports to be made under s. 272 of the Civil Procedure Code, applies to have the defendant's interest in property in the hands of the Official Trustee sold in satisfaction of his decree. I understand that the defendant, who is a widow, is entitled under a post-nuptial settlement to which she, her late husband, and the Official Trustee were parties, to a life-interest in property consisting of immovable property and Government paper held by the Official

ABDUL
LATEEF
v.
DOUTRE

Trustee; and I am also informed that on the date of the above-mentioned order there were no funds in the hands of the Official Trustee available for attachment under s. 268. The decree-holder is therefore desirous of selling the life-interest of the defendant, subject, however, to a mortgage upon it effected by her, and with that view he has obtained an order under s. 272.

The Official Trustee, who appeared in person, took exception to this proceeding, submitting in the first instance that he was not a public officer within the meaning of s. 272, or rather within the meaning of that term as defined in s. 2. The question is whether he is an officer remunerated by fees, or commission for the performance of a public duty. Having regard to the considerations mentioned by *Cunningham, J.*, in a case where the right to notice of suit under s. 424 of the Code was under discussion, I am of opinion that the Official Trustee is a public officer. *Shahebzadee Shahunshah Begum v. Fergusson*(1), *Anantharaman v. Ramasami*(2). The mere fact that he is not generally bound to undertake trusts cannot in my opinion affect the nature of the duties in respect of a trust that he does undertake. The next question is whether the mode of attachment adopted by the decree-holder is applicable to a case where the whole interest of the beneficiary, and not money actually payable or likely to become payable to him, is sought to be affected. There is distinct authority on this point which I think I ought to follow. The case to which I refer arose under the provision of the Code of 1859, s. 237 of which is similar to s. 272 of the present Code. By means of a notice given under s. 237 to the Collector, a decree-holder attached the debtor's share in a sum which he and another were entitled to receive by way of malikana rights annually as compensation for certain rights in lakhiraj lands which had been extinguished; as against a subsequent mortgagee of the debtor's rights it held that the attachment could not prevail, and the reason of the decision was that an attachment under s. 237 was only good so far as it related to any specific amount which might be set forth in the request as being then payable or likely to become payable to the defendant, and that it was not applicable to a right to receive money for ever as in the case before the Court—*Nilkumto Dey v. Hurro Soonderree Dossee*(3) as to which see also *Salamat*

(1) I.L.R., 7 Cal., 502.

(2) I.L.R., 11 Mad., 317.

(3) I.L.R., 3 Cal., 414.

Hossein v. Luckhi Ram(1). It was further observed in the former of these cases that though it might be doubtful whether the attachment should proceed under s. 235 or 236, in either case the defendant himself to whom the money was payable would be entitled to notice. I think that this construction of the section is the right one. In the present case there is no reason to doubt that the judgment-debtor has an interest in the property held by the Official Trustee, which may be attached and sold; but I must hold that her interest was not validly attached by the notice given to the Official Trustee under s. 272, and that therefore there can at present be no order for sale.

ABDUL
LATEEF
v.
MOUTRE.

APPELLATE CIVIL.

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

MARUTHAPPA (PLAINTIFF), APPELLANT,

v.

KRISHNA (DEFENDANT), RESPONDENT.*

1889.
Feb. 7, 15.

*Rent Recovery Act (Madras)—Act VIII of 1865, ss. 7, 9, 39—Copy of
patta—Tender.*

A landholder tendered to his tenant a notice stating that his *patta*, of which the particulars were given, had been prepared and calling on him to come within a month to the zemin cutcherry to fetch the *patta* and execute the *muchatta* :

Held, that there was sufficient tender of a *patta* to support a suit under s. 9 of the Madras Rent Recovery Act.

APPEAL against the decree of W. F. Grahame, Acting District Judge of Tinnevely, in appeal suit No. 174 of 1888, affirming the decree of E. C. Ransom, Acting Head Assistant Collector of Tinnevely, in summary suit No. 13 of 1887.

Summary suit by the Zemindar of Uttumalai under Madras Rent Recovery Act, s. 9, to enforce acceptance by his tenant of a *patta*.

The only issue in this case was "whether the *patta* on which the suit is based, or a copy of it, was tendered to the defendant in accordance with the requirements of the Rent Recovery Act."

(1) I.L.R., 10 Cal., 521.

* Second Appeal No. 1152 of 1888.