

occupy a position in which his decision may be obnoxious to one or other of his relatives. It has already been held in the cases of *Pugardin v. Moidin*(1) and *Bepin Behari Chowdhry v. Anneda Prosad Mullick*(2) that section 510 is not applicable unless, as its language implies, the arbitrator who is superseded for being unwilling to act, previously consented to arbitrate. On the ground that Kasturi Chetti never consented to his appointment as arbitrator and that section 510 is not applicable. I would set aside the decree appealed against, and direct that this suit be dismissed with costs.

BALA PATTABHIRAMA CHETTI
v.
SEETHARAMA CHETTI.

BEST, J.—I concur.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

ORR (PLAINTIFF NO. 1), APPELLANT,

v.

MUTHIA CHETTI (DEFENDANT NO. 1), RESPONDENT.*

1893.
December 22.
1894.
January 24.

Receiver—Appointment of a receiver by a Court under s. 503 of the Code of Civil Procedure—Misappropriation by the receiver—Whether, subject to the receiver's liability, the creditor or judgment-debtor must bear the loss.

In cases in which a receiver, appointed at the instance of the judgment-creditor under s. 503 of the Code of Civil Procedure, misappropriates moneys collected by him, the decree is not satisfied *pro tanto*, but the loss falls on the estate or its owner, subject to the receiver's liability.

APPEAL against the order of T. Weir, District Judge of Madura, dated 26th August 1892, passed on C.M.A. No. 8 of 1892, confirming the order of S. Dorasawmy Ayengar, District Munsif of Sivaganga, passed on execution petition No. 274 of 1891.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

The Lower Courts decreed in favour of the defendant and the plaintiff prepared this appeal.

Bhashyam Ayyangar for appellant.

Sundara Ayyar for respondent.

(1) I.L.R., 6 Mad., 414.

(2) I.L.R., 18 Calc., 324.

* Appeal against Appellate Order No. 53 of 1892.

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v.
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JUDGMENT.—In original suit No. 415 of 1884 on the file of the District Munsif of Sivaganga, appellant obtained a money decree against respondent. In execution of the same, the produce of the village of Kumbanur in fasli 1299 was attached by appellant, and on his application, a receiver was appointed under section 503 of the Code of Civil Procedure to superintend the harvest and to recover the melvaram. The receiver collected a sum of Rs. 845-2-7 on account of the melvaram, but instead of remitting the amount to the Court, misappropriated it to his own use. Thereupon, respondent instituted criminal proceedings against him, and the receiver absconded and is still absconding. Appellant then applied for execution against respondent in respect of the balance due under the decree, and the latter contended that the decree must be taken as satisfied to the extent of the sum of money misappropriated by the receiver, from whom, it would appear, no security was taken, for the due performance of his office. Both the Courts below disallowed the contention, hence this appeal. The question which arises for determination is, whether in cases in which a receiver appointed at the instance of the judgment-creditor under section 503, misappropriates his collections, the decree ought to be treated as satisfied *protanto*, on the ground that he is the agent of the judgment-creditor on whose application he was appointed.

The only case cited at the hearing is, that of *John Tiel and Co. v. Abdool Hye*(1). That was decided under section 243, Act VIII of 1859. There the manager exceeded the powers conferred upon him by the Court, and mortgaged the attached property with the consent of all the parties concerned, so as to leave some proprietary interest in the judgment-debtor. The question for determination was whether any judgment-creditor coming after the appointment of the manager and the making of the said mortgage, had a right to attach and sell what remained of the judgment-debtor's interest in the property. The Court held that he was entitled to attach, and stated the ground of decision in these terms: "A manager appointed under Act VIII of 1859, s. 263, so far as he is an officer of the Court, is, at the most, the *hand* of the Court for the purpose of gathering in on behalf of the judgment-debtor the moneys due to him, in order that they may immediately be applied to the satisfaction of the decree. If

“ he does more than this and deals with the subject of the property itself, he must do so as the agent of the judgment-debtor, and not “ properly as the officer of the Court.” In the case before us, the receiver collected the melvaram in the exercise of the power conferred upon him by the Court, but instead of paying the collections into Court, as he was bound to do, in order that they might be applied in satisfaction of the decree, misappropriated them to his own use in breach of his duty as receiver. I am of opinion that the Judge is right in holding that the present case is not on all fours with the other case. I do not think, however, that the decision of the Judge can be supported. He considers that the receiver in the present case was the judgment-creditor’s agent, because it was on his application that the appointment was made. The appointment is the act of the Court and once made in the interests of justice or *ex debito justitiæ*. He is an officer or representative of the Court, and subject to its orders. His possession is the possession of the Court by its receiver, and the tenants in possession, when he is appointed to receive rents and profits of immovable property, become virtually tenants *pro hac vice* of the Court, their landlord. His possession is the possession of all the parties to the proceeding according to their titles. The moneys in his hands are in *custodia legis* for the person who can make a title to them. The Judge observes that very wide powers are conferred upon receivers by section 503 including a power to remove the property in possession, but it does not follow from it that his relation either to the Court or to all the parties interested in the proceeding undergoes any change in proportion to the extent of his powers. For, it has been held in England in similar cases that a receiver appointed by the Court is appointed on behalf and for the benefit of all persons interested, parties to the suit or proceeding. This being so, it is clear that if a loss arises from the default of the receiver, the estate must bear the loss as between the parties to the suit or proceeding. It is true that when the party entitled to an estate is ascertained, the receiver will be considered his receiver and their principle is applicable in the case of a suit in which title to property is decreed, and not to the case before me, for the decree under execution is a money decree, the title in the property under attachment continuing to vest in the judgment-debtor. The first-mentioned rule is only the result of the general principle that the loss must fall on the estate or its owner, subject

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to the receiver's liability. The terms "receiver" and "manager" are synonymous, and though the appointment of a receiver may, in certain cases, operate to change possession, yet it has no effect whatever on the title of either party to the property which is placed in the possession of the receiver. For any loss arising from his default, the receiver is certainly responsible, but when he cannot be proceeded against the question as between innocent parties is who ought to bear the loss which is imputable to neither, and the only answer is that it must devolve on the estate to which the appointment relates. There is also another reason in support of this view. Moneys in the hands of the receiver belong to the Court which appointed him, and are in *custodia legis*, and he cannot spend them except under the orders of the Court. If they are lost, whilst in custody of the receiver notwithstanding the exercise by him of due care, it cannot be denied that the loss must devolve on the estate, for the loss is not imputable to his default or that of any other. The Courts below are in error in introducing a theory of agency without reference to the title to the property, for the collection of the rents of which the receiver has been appointed. I set aside the orders of both the Courts below and direct that appellant be allowed to execute his decree without being compelled to deduct from the amount thereof the amount misappropriated by the receiver. Respondent will pay appellant's costs throughout.
