

1878

MANIK SINGH  
v.  
PARAS RAM.

his decree of 11th November, 1875, declared his lien was about to be sold in execution of his decree dated 15th January, 1876, the surplus sale-proceeds might be attached for the purpose of being applied to the satisfaction of the decree of 11th November, 1875, and that an order was passed on 3rd June, 1876, in accordance with the petition.

Under the circumstances we are of opinion that the decree-holder of 11th November, 1875, was entitled to share in the sale-proceeds, under the provisions of s. 271 of Act VIII of 1859, as one who had prior to an order for distribution, before the sale even, taken out execution of his decree against the same judgment-debtor and not obtained satisfaction thereof, and as his lien as well as the decree which declared it were prior in date to the lien and decree held by the plaintiff, was entitled to share before him.

We therefore decree the appeal with costs, modifying the lower appellate Court's decree so far as it modified that of the Court of first instance, and restoring the latter in its entirety.

*Appeal allowed.*

## APPELLATE CIVIL.

1878  
June 21.

*Before Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Oldfield.*

MERCER (JUDGMENT-DEBTOR) v. NARPAT RAI AND ANOTHER (DECREE-HOLDERS).\*

*Execution of Decree—Military Officer—Stat. 40 Vict. c. 7 (Mutiny Act, 1877), s. 99.*

Where, with reference to s. 99 of the Mutiny Act, a decree for money made against a military officer serving in India directed that the judgment-debt should be stopped out of a moiety of such officer's pay, held that the decree-holder could not obtain satisfaction of the decree by attachment of such officer's moveable property (1).

THE judgment-debtor in this case was an officer belonging to Her Majesty's Royal Artillery serving in Allahabad. The decree,

\* Miscellaneous First Appeal, No. 27 of 1878, from an order of J. W. Quinton, Esq., Judge of Allahabad, dated the 2nd May, 1878.

(1) In *Bansi Lal v. Mercer*, H. C. R., N. W. P., 1875, p. 331, it was held that, where no provision had been made in a decree for the stoppage of the pay of a military officer, the pay of such officer could not be attached in the execution of the decree in the hands of the Paymaster.

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which was dated the 1st June, 1877, was a decree for money made by a Civil Court in the Panjab. It specially directed, with reference to s. 99 of Stat. 40 Vict. c. 7 (The Mutiny Act, 1877), that the judgment-debt should be stopped and paid to the judgment creditor out of a moiety of any pay coming to the judgment-debtor in the current month or any future months. This decree was sent for execution by the Court which made it to the District Court at Allahabad. In execution thereof certain moveable property belonging to the judgment-debtor was attached in his residence at Allahabad. The judgment-debtor objected to this attachment on the ground that the decree did not award execution thereof generally. The Judge of the District Court made an order disallowing the objection on the ground that it was one to be urged before the Court which made the decree and not before him.

The judgment-debtor appealed to the High Court against the order of the District Court.

Mr. *Spankie*, for the appellant, contended that the District Court was bound to consider whether or not the decree was being executed according to its terms; that the decree, which was made in view of s. 99 of the Mutiny Act, only authorised the stoppage of the judgment-debtor's pay, and that consequently, under the provisions of that section, the judgment-creditor could not take out execution of the decree against the property of the judgment-debtor.

The *Junior Government Pleader* (Babu *Dwarkanath Banarji*), for the respondent, contended that the fact that the decree directed the pay of the judgment-debtor to be stopped, did not debar the judgment-creditor from taking out execution against the property of the judgment-debtor under the Code of Civil Procedure.

The judgment of the Court was delivered by

TURNER, O. C. J.—The Judge of Allahabad, in receiving the application for execution, was bound to consider whether there was anything to prevent execution in the manner prayed. At the time the decree was passed the decree-holder obtained an order from the Court which passed the decree for the satisfaction of the decree by stoppage of half the defendant's pay. So long as that order subsists the decree-holder cannot obtain satisfaction of his decree by

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attachment, for it is clear to us that the decree-holder is not, as against officers to whom the Mutiny Act is applicable, entitled to both remedies at once. The object of the Act is to prevent public servants whose services may be urgently required from being incapacitated to discharge such services. The appeal is decreed and the order of the Judge discharged with costs.

*Appeal allowed.*

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June 28.

## CIVIL JURISDICTION.

*Before Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Pearson.*

KANHAIYA LAL (PLAINTIFF) v. DOMINGO AND ANOTHER (DEFENDANTS). \*

*Promissory Note—Assignment of Chose in Action—Form of Suit by Assignee—Act IX of 1872 (Contract Act), s. 62.*

*Held*, where a promissory note made payable simply to the payee without the addition of the words order or bearer, and therefore not negotiable, was assigned to a third person, that the assignee could sue upon such note, a chose in action being by the law of India assignable, and that the assignee could sue in the Courts of India in his own name.

THIS was a reference to the High Court, under s. 617 of Act X of 1877, by Mr. G. E. Knox, Judge of the Court of Small Causes at Allahabad.

The question referred by the Judge was the following: "Can a person, who has acquired by purchase for valuable consideration all the rights of a promisee in a promissory note, without notice given to the promisor, sue the promisor for the balance due upon such promissory note"? The facts of the case out of which this question arose were stated by the Judge to be as follows:

"On the 7th April, 1876, W. Domingo, one of the defendants in the present case, executed a promissory note in favour of Lala Gur Prasad, the second defendant, payable on demand. On the 7th April, 1878, Gur Prasad had sold all his right and interest in the promissory note to the plaintiff, Kanhaiya Lal, without giving notice of the sale to W. Domingo. These facts are admitted, and it is also conceded that since the sale W. Domingo has not in any way assented to the transfer, and only became aware of it on being asked

\* Reference, No. 8 of 1878, from G. E. Knox, Esq., Judge of the Court of Small Causes at Allahabad, dated the 1st June, 1876.