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MUMFORD
v.
PEAL.

STUART, C. J.—I am so entirely satisfied with the examination of this case, in fact and in law, afforded by the judgment of my colleague Mr. Justice Straight, that I feel I need add nothing to what he has so clearly and satisfactorily stated. The case of *Madho Singh v. Thakoor Pershad* (1) was a judgment of my own concurred in by my colleague Mr. Justice Spankie, and is correctly stated as an authority in support of the opinion that the cause of action in the case of an instalment-bond accrues on the first default, whence limitation begins to run. The appeal is dismissed with costs in all the Courts.

Appeal dismissed.

1880
April 30.

Before Mr. Justice Pearson and Mr. Justice Straight.

BUJHAWAN LAL (DEFENDANT) v. SUKHRAJ RAI (PLAINTIFF).*

Attachment—Cross-decrees—Act VIII of 1859 (Civil Procedure Code), s. 209.

In April, 1877, *M* sued *S* for money and on the 10th May, 1877, *S* sued *M* for money, both suits being instituted in the same Court. In the meantime, on the 9th May, 1877, *B* applied for the attachment of the money claimed by *M* in his suit, and obtained an order prohibiting *M* from receiving, and *S* from paying, any sum which might be found in that suit to be due by *S* to *M*. On the 23rd June, 1877, *M* obtained a decree in his suit against *S*, and *S* obtained a decree in his suit against *M*, *S*'s decree being for the larger sum. On the same day, under the provisions of s. 209 of Act VIII of 1859, satisfaction for the smaller sum was entered on both decrees, and execution taken out of *S*'s decree for so much as remained due. At the same time *S* objected to *B*'s attachment, but his objection was disallowed. *Held*, in a suit by *S* against *B* to have the order disallowing his objection set aside and the propriety and legality of the set-off above mentioned established, regard being had to the provisions of s. 209 of Act VIII of 1859, that the attaching order of the 9th May could have no operation or effect, and that, even if *B* had followed up that order and attached *M*'s decree against *S*, that step would not have put him in a better position, for the same reason being followed, and the decrees being essentially cross-decrees, that for the smaller sum became absorbed in the one for the larger, and attachment could not affect it.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

* Second Appeal, No. 1139 of 1879, from a decree of Maulvi Abdul Majid Khan, Subordinate Judge of Ghazipur, dated the 25th July, 1879, reversing a decree of Babu Nilmadhab Roy, Munsif of Ghazipur, dated the 14th May, 1879.

(1) H. C. R., N.-W. P., 1873, p. 35.

Munshi *Kashi Prasad*, for the appellant.

Munshi *Hanuman Prasad*, for the respondent.

The judgment of the High Court (PEARSON, J., and STRAIGHT, J.,) was delivered by

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STRAIGHT, J.—The following facts must be recapitulated in order to make the grounds upon which this appeal is based intelligible. On the 24th April, 1877, Mahadeo Lal, defendant No. 2, brought a suit for work done and materials provided against Sukhraj Rai, the plaintiff. On the 10th May, 1877, Sukhraj Rai, the plaintiff, instituted a suit on a bond against Mahadeo Lal, defendant No. 2. On the 23rd June, 1877, the claim in each case was decreed, that of Sukhraj Rai, the plaintiff, being for the larger amount. Meanwhile, namely, on the 9th May, 1877, Bujhawan Lal, defendant No. 1, lodged an application for attachment of the amount pending in the suit of Mahadeo Lal, defendant No. 2, against Sukhraj Rai, the plaintiff, and an order was made to that effect. It is alleged by defendant No. 1, appellant before us, that notice was issued to Mahadeo Lal, defendant No. 2, not to receive, and to Sukhraj Rai, plaintiff, not to pay, any sum that might be found to be due by the latter to the former. The receipt of any such intimation is denied by Sukhraj Rai the plaintiff, but the matter is not very important either one way or the other in the decision of this case. On the 23rd June, 1877, the plaintiff Sukhraj Rai, having obtained leave in the execution-department to set off the amount of defendant No. 2's decree against him, gave credit for the amount of that decree, and deducting it from his own decree against Mahadeo Lal, defendant No. 2, applied for execution in respect of the balance thereafter remaining due. About the same time Sukhraj Rai the plaintiff made an objection in the execution-department to defendant No. 1's attachment of the 9th May, 1877, but it was disallowed, and the present suit is brought to have the Munsif's order to that effect set aside and the propriety and legality of the set-off already mentioned established. On the 25th July, 1877, Bujhawan Lal, defendant No. 1, obtained an order for the attachment of the decretal amount of Mahadeo Lal, defendant No. 2's decree against Sukhraj Rai the plaintiff, and on the

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15th March, 1879, he brought to sale and purchased it. The present suit was dismissed by the Munsif, but upon appeal the lower appellate Court decreed the claim, and Bujhawan Lal, defendant No. 1, now appeals on the following grounds :—(i) that the decree of Mahadeo Lal against Sukhraj Rai having been previously attached, it was not competent for Sukhraj Rai to apply it as a part set-off to his decree against Mahadeo Lal ; (ii) that as the decrees were not being simultaneously executed, no set-off could be made, and even if it could, it required to be sanctioned or refused in the execution-department and cannot be made the subject of a regular suit.

The substantial point for consideration appears to be whether the order of the Munsif of the 9th May, 1877, attaching the amount of claim pending in the suit of Mahadeo Lal against Sukhraj Rai, was a good and valid one, and could effectually bar Sukhraj Rai from making a subsequent set-off of the amount of that decree in execution of a decree of his own against Mahadeo for a larger sum.

The provisions of Act VIII of 1859 are applicable to the case. It will be observed that, at the time the order of the Munsif was passed, no amount had been ascertained to be due from Sukhraj Rai to Mahadeo, and for aught that might appear to the contrary nothing was due. As a matter of fact, there was no debt owing from Sukhraj Rai to Mahadeo Lal, but Mahadeo Lal was indebted to him in a much larger amount, and when the two decrees were passed on the 23rd June, he being the holder of the decree for the larger amount was bound by the provisions of s. 209 of the old Procedure Code to take out execution for so much only as remained due to him, after deducting the amount due to Mahadeo Lal as to which satisfaction had to be entered up. As Mahadeo Lal had no claim against Sukhraj Rai and no debt was due, the order of the Munsif could have no operation or effect, and though it was possibly a wise precaution of Bujhawan Lal to get it made, his proper course would have been to follow it up by attaching the decree of Mahadeo Lal against Sukhraj Rai. This step, however, would not have put Bujhawan Lal in a better position, because s. 209 being followed and the decrees being essentially

cross-decrees, that for the smaller amount became absorbed in the one for the larger, and attachment could not affect it. The appeal, therefore, fails and is dismissed with costs.

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Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

OSTOCHE (PLAINTIFF) v. HARI DAS AND ANOTHER (DEFENDANTS).*

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May 3.

*Declaratory Decree—Consequential Relief—Court-fees—Act VII of 1870
(Court Fees Act), s. 7, iv, sch. ii, 17, iii.*

In a suit for a declaration of proprietary right in respect of a house in which the removal of an attachment of such house in the execution of a decree was sought, the plaintiff did not, as s. 7 of the Court Fees Act directs, state in his plaint the amount at which he valued the relief sought, nor did the Court of first instance cause him to supply this defect. On appeal by the plaintiff from the decree of the Court of first instance dismissing his suit, the lower appellate Court demanded from the plaintiff court-fees in respect of his plaint and memorandum of appeal computed on the market-value of such house, the plaintiff having only paid in respect of those documents respectively the court-fees payable in a suit for a declaration of right where no consequential relief is prayed. *Held* that the market-value of the property could not be taken by the lower appellate Court to be the value of the relief sought, as the plaintiff did not seek possession of the property, and that as the valuation of the relief sought rested with the plaintiff and not the Court, and as in this instance the declaration of right claimed necessarily carried with it the consequential relief sought, of which the value was merely nominal, further court-fees could not be demanded by the lower appellate Court from the plaintiff.

THE original plaintiff in this suit, which was instituted in the Court of the Subordinate Judge of Jaunpur, was one Abdul Rahman. He stated in his plaint that he had purchased a certain house at a sale in the execution of a decree against one Sarah Matthews, that he was unable to obtain possession of it, as it was in the possession of a mortgagee, and that his cause of action was the proclamation of the house for sale in the execution of a decree held by the defendant Hari Das against Sarah Matthews; and he claimed a declaration of his proprietary right to the house "by setting aside the order of the 13th May, 1878, maintaining the attachment of the property" in the execution of Hari Das' decree. He further stated

* Second Appeal, No. 1342 of 1879, from a decree of G. E. Knox, Esq., Judge of Benares, dated the 16th September, 1879, affirming a decree of Paudit Jagat Narain, Subordinate Judge of Jaunpur, dated the 19th June, 1878.