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to the provocation given. The law does not sanction or approve a man taking into his own hands the duty of punishing his wife in the mode adopted by the prisoner, and it would be most dangerous to society if the Courts of this country were to adopt the doctrine that he might. "No man under the protection of the law is to be the avenger of his own wrongs. If they are of the nature for which the laws of society will give him an adequate remedy, thither he ought to resort"—"Russell on Crimes and Misdemeanours," Vol. I, 4th ed. p. 725. The conduct of the deceased woman in meeting her paramour was no doubt most improper; but the meeting took place in a public place and under circumstances that, while they might arouse the appellant's anger, they cannot be regarded of such a character that they can properly be held to have deprived him of his self-control to the extent and degree required by the law, before the nature of his crime can be reduced from murder to culpable homicide.

I approve of the order of my brother Brodhurst that this appeal should be dismissed, and I also agree in the recommendation that he proposes. While it is essential that in cases of this kind the true legal nature of the act, of which the person has been guilty, should be recorded against him, the question of punishment may, I think, with propriety, be brought to the notice of His Honor the Lieutenant-Governor, in whose hands resides the exercise of the prerogative of mercy. I agree with my brother Brodhurst that there are circumstances in this case which show it to be of a somewhat exceptional character, and I therefore concur in his recommendation.

Appeal dismissed.

APPELLATE CIVIL.

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August 2.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.

BAHORI LAL (APPELLANT) v. GAURI SAHAI (RESPONDENT).*

Civil Procedure Code, ss. 244 (c), 278-283—Question for Court executing decree—Separate suit—"Representative" of judgment-debtor.

The decree-holder under a decree for enforcement of lien against the zamindari rights and interests of K, applied for execution by attachment and sale of

* First Appeal No. 112 of 1886, from an order of Mirza Abid Ali Khan, Subordinate Judge of Sháhjahánpur, dated the 7th December, 1885.

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certain shares, one of which was recorded in the *khewat* in the name of *K*, and two others in the name of *B*, his brother's widow. The shares having been attached, the judgment-debtor died, and *J*, his brother, and *L*, his son, were substituted as his representatives. In execution of the decree, only the share which had stood recorded in the name of the deceased judgment-debtor, and which was in possession of *J* and *L* as his representatives, was sold; and the decree-holder then applied for sale of the other shares which had been attached. To this *B* objected under s. 281 of the Civil Procedure Code, claiming to be the owner of the shares in question. Before the hearing of her objections she died, and *L* applied to have his name brought upon the record in her place for the purpose of supporting the objections. An order having been passed disallowing the objections which had been filed by *B*, *L* appealed to the High Court. A preliminary objection was taken on behalf of the decree-holder to the hearing of the appeal, on the ground that as the first Court's order related to *L*'s claim, as the heir of *B*, to have the shares entered in her name released from attachment, it must be regarded as passed under s. 281 of the Civil Procedure Code, and as conclusive, subject to *L*'s bringing a suit to establish his right. On the other side, it was contended that, *L* being the representative of the deceased judgment-debtor *K*, the first Court's order must be regarded as passed under s. 214 of the Code, and the appeal would therefore lie.

Held that the preliminary objection must prevail, and the first Court's order must be regarded as passed under s. 281 and not under s. 214 of the Code, inasmuch as *L*'s claim which was rejected by it was nothing more than to come in as *B*'s representative for the purpose of supporting her objections; and it was in right of a third person, whose interest he asserted to have passed to him, that he prayed admission to the proceedings, and this character was wholly distinct from that he filled as the legal representative of his deceased father. Because *L* happened, for the purpose of the execution-proceedings, to be his father's legal representative, and to be liable to satisfy the decree to the extent of any assets which might have come to his hands, it did not follow that any rights claimed by him through a third person must be dealt with, and could only be dealt with, between him and the decree-holder in the execution-proceedings.

Wahed Ali v. Jumace (1), *Ram Ghulam v. Hazaru Kuar* (2), *Sita Ram v. Bhagwan Das* (3), *Shankar Dial v. Amir Hailar* (4), *Nath Mal Das v. Tajammul Husain* (5), and *Kanai Lal Khun v. Sashi Bhuson Biswas* (6), referred to.

THE facts of this case are stated in the judgment of Straight, Offg. C. J.

Munshi *Hanuman Prasad* and Pandit *Nand Lal*, for the appellant.

Mr. *Carapiet*, for the respondent.

STRAIGHT, Offg. C. J.—In order to make the questions that have been raised in this appeal intelligible, it is necessary to state the

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| (1) 11 B. L. R., 149. | (4) I. L. R., 2 All. 752. |
| (2) I. L. R., 7 All. 547. | (5) I. L. R. 7 All. 36. |
| (3) I. L. R., 7 All. 733. | (6) I. L. R., 6 Calc. 777. |

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the name of Kalian Singh, judgment-debtor, and 5 biswas in the name of Janki and 5 biswas in that of Bijai Kuar, in mauza Deva, of which Kalian Singh is the owner." As I have already stated, Janki's name had been expunged and no share stood in her name at all. On the 23rd April, 1884, the Court issued an attachment against the whole 15 biswas, and on the 11th of May following they were attached. On the 8th June, 1884, Kalian Singh, the judgment-debtor, died, and Janki, his widow, and Bahori Lal, his son, were substituted as his representatives on the 18th of the same month.

On the 29th of November, 1884, the Subordinate Judge transferred the execution-proceedings to the Collector of the district, and on the 20th June, 1885, the Collector put up and sold only the 5 biswas share which had stood recorded in the name of the deceased judgment-debtor, and which was in the possession of Janki and Bahori Lal as his representatives. Subsequently, Gauri Sahai applied for sale of the 5 biswas which he described as entered in the name of Janki and the 5 biswas in the name of Bijai Kuar. On the 19th September, 1885, Bijai Kuar filed objections, stating that Janki had no interest in the property; that she (Bijai Kuar) was the owner, and that any interests derived by Janki from her deceased husband had already been sold by the decree-holder. The 14th November, 1885, was fixed for the hearing of these objections, but before that date Bijai Kuar died, and on the 11th November Bahori Lal, under the guardianship of his mother, applied to have his name brought on the record in her place with the object of supporting her objections. This was done subject to anything that might hereafter be urged by the decree-holder. On the 5th December, 1885, he in his turn put in objections to the effect that any interest Bijai Kuar might have had in the property died with her, and that she left no rights that could pass to Bahori Lal as her heir; on the contrary, that anything she had was in reality the property of Kalian Singh, that it was hypothecated in the bond of the 2nd January, 1875, and that by the terms of the compromise between Bijai Kuar and Kalian Singh and Janki, the first-named had agreed that the property should be liable for the debts of Kalian Singh. These objections were heard and disposed of by the Subordinate Judge on the 7th December, 1885; and he held that

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“no specified share of Kalian Singh has been charged under the decree sought to be executed and under the bond dated the 2nd January, 1875, the basis of the decree; on the contrary, a charge was created on the whole right and interest in mauza Deva Kanchan; therefore the share of Kalian Singh in the property, standing in the name of Bijai Kuar, should also be considered hypothecated. The objection that the property of Bijai Kuar had been exempted should not have been allowed. She might have perhaps continued in possession during her life, but she died while the suit was pending. The son of Kalian Singh, the heir of the judgment-debtor, wishes to become the representative of Bijai Kuar, but the Court thinks none can become her representative, her interest having been merely life interest: *ordered* that the *claim* be disallowed with costs.”

It is obvious therefore, from the terms of the order of the Subordinate Judge, that the proceeding before him had reference to the objections which had been filed by Bijai Kuar, and supported by Bahori Lal, through his guardian, pursuant to the order granted on the application of the 11th November, 1885. The decision of the Subordinate Judge was appealed from by Bahori Lal to the Judge, and among the pleas was the fourth to the following effect:—“As applicant is the representative of Kalian Singh, judgment-debtor, and the execution is taken out against him, all the objections raised by him *should have been set at rest under s. 244 of the Civil Procedure Code*, and he should not be made to prefer a claim.” The Judge disposed of the case upon a preliminary point of jurisdiction, holding that as “the decree, in the execution of which the objection is taken, is over Rs. 5,000 in amount,” this Court, and not his Court, was the proper appellate tribunal. He accordingly returned the memorandum of appeal for presentation here, and this is the mode in which the matter comes before us. When the case came on for hearing, Pandit *Bishambar Nath*, for the respondent, took a preliminary objection to the effect that the proceeding before the Subordinate Judge having taken place in reference to the claim of Bahori Lal, as the heir of Bijai Kuar, to have the 10 biswas share released from attachment, his order must be regarded as passed under s. 281 of the Civil Procedure Code, and such being the case, and it being conclusive,

subject to Bahori Lal's bringing a suit to establish his right, no appeal lay to this Court. In reply for the appellant, it was urged that the proceeding before the Subordinate Judge must be regarded as held under s. 244, Bahori Lal being the representative of Kalian Singh, and in support of this contention a ruling of the Privy Council—*Wahed Ali v. Jumae* (1)—and one of this Court—*Ram Ghulam v. Hazaru Kuar* (2)—were referred to.

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I think that the preliminary objection urged for the respondent is a valid one and must prevail. It is clear that the objections filed by Bijai Kuar on the 19th September, 1885, were put in under s. 278 of the Code, and that, whether rightly or wrongly, she claimed to be entitled to the two shares of 5 biswas each, and on that ground to have the decree-holder's attachment released. Had she survived, those objections would have had to be considered and disposed of in the manner provided in ss. 280 and 281, and had the decision been adverse to her, her remedy, and her only remedy, would have been a suit of the kind mentioned in s. 283. All that Bahori Lal sought to be allowed to do was to come in as the representative of Bijai Kuar for the purpose of supporting those objections, and it was his claim to do this that was rejected by the Subordinate Judge, and nothing more. It was in right of a third person, whose interest he asserted to have passed to him, that he prayed admission to the proceedings, and this character was wholly distinct and apart from that he filled as the legal representative of his deceased father, in which capacity he had been cited after the passing of Gauri Sahai's decree. No application had been put in by the decree-holder, which would have made the second paragraph of s. 234 applicable, and in my opinion it is impossible to hold that the question decided by the Subordinate Judge, which is sought to be impeached on appeal here, was one that fell within the purview of cl. (c), s. 244; on the contrary, if any section covers the Subordinate Judge's order, it must be s. 281. I do not think that because Bahori Lal happens, for the purpose of the execution-proceedings under Gauri Sahai's decree, to be the legal representative of his father Kalian Singh, and to be liable to satisfy it to the extent of any assets which may have come to his hands, that any rights claimed by him through a third person must be

(1) 11 B. L. R. 149.

(2) I. L. R. 7 ALL 547.

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dealt with, and can only be dealt with, between him and the decree-holder in the execution-proceedings, in which, be it observed, only for the property of the deceased which has come to his hands, and has not been duly disposed of, can any personal responsibility attach to him. I do not understand the Privy Council ruling, or the judgment of this Court referred to by the appellant's learned pleader, to lay down the proposition that the legal representative of the judgment-debtor, brought in after decree, is constrained to have his title, possibly to a large property, determined by the summary method adopted in execution-proceedings, and that because he is another man's legal representative, he is placed in a worse position than other people, and has no remedy by suit. Both the cases had reference to persons who had been cited in the suit as representatives of a deceased person before decree, and so far as the ruling of their Lordships of the Privy Council was concerned, its direct object was to determine that such persons were parties to the suit for the purpose of s. 11 of Act XXIII of 1861, and their remarks referred to by my brother Oldfield in *Ram Ghulam v. Hazaru Kuar* (1) are directed to that point and that point only. I allow the preliminary objection, that the order here was not passed under s. 244 of the Code, and dismiss the appeal with costs.

MAHMOOD, J.—I confess that I have had considerable doubts upon the question of law raised in this case, and the difficulty is considerably enhanced by the fact that there exists a long conflict of decisions in the published reports as to how far the representative of a judgment-debtor can be dealt with as a party to the suit for purposes of execution-proceedings relating to the questions under s. 244 of the Civil Procedure Code. The most important case upon the subject is *Wahed Ali v. Jumaea* (2), where the Lords of the Privy Council held that a party sued in a representative character, against whom a decree is obtained, is a party to the suit for purposes of execution of such decree. The same is the effect of *Oseem-un-nissa Khatoon v. Ameer-un-nissa Khatoon* (3). The rule appears to have been carried further by a Division Bench of the Calcutta High Court in *Ameer-un-nissa Khatoon v. Meer Mozuffur Hossein Chowdhry* (4), where the same rule was applied to the case of a person

(1) I. L. R., 7 All. 547. (3) 20 W. R. 162.

(2) 11 B. L. R. 149. (4) 12 B. L. R. 65.

who was not a party to the decree, but had been brought upon the record as representative of the deceased judgment-debtor in the execution-proceedings. The view is in accord with a much older ruling of the Madras High Court in *Buddu Ramaiya v. C. Venkaiya* (1), where it was held that questions arising between the parties to the suit cannot be limited to questions arising between those who were parties to the suit at the date of the decree; but after decree the representative of a decree-holder, or the representative of a defendant against whom an execution is sought, become parties to the suit for the purposes of execution. The same is the effect of a later ruling of the same Court in *Kuriyali v. Mayan* (2). On the other hand, the rulings of this Court in two cases—*Abdul Rahman v. Muhammad Yar* (3) and *Awadh Kuari v. Raktu Tiwari* (4) seem to proceed upon a *ratio decidendi* which appears to be inconsistent with the rulings above referred to. Indeed, in *Nimba Harishet v. Sita Ram Paraji* (5), Sargent, C. J., referring to the former of these cases, declined to follow it, regarding it to be inconsistent with the Privy Council ruling, and he adopted the ruling of the Madras Court in *Arundadhi Ammyar v. Natesha Ayyar* (6). Again, the rulings of this Court in *Ram Ghulam v. Hazaru Kuar* (7) and *Sita Ram v. Bhagwan Das* (8), in both of which I concurred with my brother Oldfield, laid down the rule that the representative of the judgment-debtor who had objected that the property attached had been acquired by himself, and not inherited from the judgment-debtor, and was therefore not liable in execution, must be treated as a party to the suit within the meaning of s. 244 of the Civil Procedure Code, and the objection must be dealt with in execution of the decree. I must also here point out that whilst in the latter of these cases the representative of the judgment-debtor was brought upon the record in the execution-proceedings subsequent to the decree, in the former case the representatives were themselves impleaded in the original suit in that capacity, and the decree had been obtained against them. In delivering my judgment in the case, whilst concurring with my brother Oldfield, I expressed the view that the turning point upon which the application of the rule contained in s. 244 of the Civil

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(1) 3 Mad. H. C. Rep. 263.

(5) I. L. R., 9 Bom. 453.

(2) I. L. R., 7 Mad. 255.

(6) I. L. R., 5 Mad. 391.

(3) I. L. R., 4 All. 190.

(7) I. L. R., 7 All. 547.

(4) I. L. R., 6 All. 199.

(8) I. L. R., 7 All. 733.

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Procedure Code, barring adjudication in a regular suit, depends, is, whether the judgment-debtor, in raising objections to execution of decree against any property, pleads what may analogically be called a *jus tertii*, or a right which, although he represents it, belongs to a title totally separate from that which he personally holds in such property. And I also held that this view was consistent with the *ratio decidendi* which had been adopted by my brother Oldfield in *Shankar Dial v. Amir Haidur* (1), and which I followed in *Nath Mal Das v. Tajammul Husain* (2), and at the same time I expressed my dissent from the ruling of a Division Bench of the Calcutta Court in *Kanai Lall Khan v. Sashi Bhuson Biswas* (3), which goes the length of holding that even where a person, upon the death of a Hindu widow, is made a party to the suit as reversionary heir to the estate, and a decree is passed against him, he may in a subsequent suit claim to establish that the decree covered only the life-interest of the widow. The *ratio decidendi* adopted in the ruling seems to be that, although the plaintiff was impleaded in the decree as the representative of the widow, the nature of his claim was such as to exclude it from the operation of s. 244 of the Code—a view which I could not reconcile with the ruling of the Lords of the Privy Council in *Wahed Ali v. Jumae* (4). These are not the only reported cases which complicate the question; and in this state of the case-law, I felt inclined to ask the learned Chief Justice to refer this case to the Full Bench. But I am not prepared to dissent from him in the distinction which he has drawn between this case and the rulings to which I have referred. The present appellant was no party to the original decree of the 28th September, 1883, and he was impleaded in execution-proceedings as the representative of the original judgment-debtor, Kalian Singh, and in that capacity he might, according to the rulings to which I have already referred, be treated as a party to the suit for purposes of s. 244 of the Code. But the case, as it has come before us, does not, as the learned Chief Justice has shown, relate to such capacity. In the execution-proceedings a third party, Musammatt Bijai Kuar, who could under no conditions be regarded as the representative of the judgment-debtor, Kalian Singh, raised objections on the 19th September, 1885, to the attachment of the property, and her objections were undoubt-

(1) I. L. R., 2 All. 752.

(3) I. L. R., 6 Calc. 777.

(2) I. L. R., 7 All. 36.

(4) 11 B. L. R. 149.

edly such as are contemplated by ss. 278-281 of the Civil Procedure Code. The 14th November, 1885, was fixed for the hearing of the objections; but the objector died in the meantime, and the present appellant had his name substituted as the representative of the objector, and the objections were disposed of on the 7th December, 1885, and this is the order from which this appeal has been preferred.

Upon this state of things, I am not prepared to dissent from the learned Chief Justice in the view that the case is not on all fours with the Privy Council ruling in *Wahed Ali's Case* (1), and that it is distinguishable from the other rulings to which reference has been made. Nor am I prepared to dissent from him in the view that the mere circumstance of the representative of a deceased judgment-debtor becoming the representative also of a deceased third party, who was objector in the execution-proceedings, will not preclude him from prosecuting those objections, and that the adjudication upon such objections falls beyond the scope of s. 244 of the Code. Indeed, as the learned Chief Justice has pointed out, the matter was dealt with in the Court below as objections by a third party, and there can be little doubt that the order of the 7th December, 1885, now under appeal, was passed under s. 281 of the Code, as it disallowed the objections upon the ground that the appellant had inherited nothing from the original objector, Musammat Bijai Kuar. And this being so, I am not willing to disagree with the learned Chief Justice in holding that, under the circumstances of this case, the proper remedy for the appellant would be a suit such as is contemplated by s. 283 of the Code.

For these reasons I concur in the order which the learned Chief Justice has made.

Appeal dismissed.

CRIMINAL REVISIONAL.

1886
August 2.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.

QUEEN-EMPRESS v. LOCHAN.

Murder—Culpable homicide not amounting to murder—Grave and sudden provocation—Act XLV of 1860 (Penal Code), ss. 300, Exception 1, 302, 304.

An accused person was convicted of culpable homicide not amounting to murder in respect of the widow of his cousin, who lived with him. The evidence

(1) 11 B. L. R. 149.