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MUHAMMAD ABID v. MUHAMMAD ASGHAR.

in s. 522, which are those to set aside an award on any of the grounds mentioned in s. 521.

The defendent, in appeal, however, does not contest the award on any of those grounds.

His objection is that the persons who made the award had no power at all to make it; and there was, in consequence, no legal award; and he questions the legality of the procedure. Whether or not the defendant would be precluded in appeal from making objections on any of the grounds mentioned in s. 521, because he had not applied to set aside the award on those grounds within the time allowed by the Limitation Act for making the application, is a question we need not determine, as it does not arise here; but there is nothing with reference to the Limitation Act to prevent him from raising the question he now does.

A long argument was addressed to us by Pandit *Ajudhia Nath* on behalf of the defendant, that the plaintiff-appellant's application to file the agreement was itself barred by limitation under art. 178 of the Limitation Act; but taking the view here taken, that the appeal fails, it is unnecessary to discuss it.

The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

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GOPAL DAI (PLAINTIFF) v. CHUNNI LAL (DEFENDANT)*

Execution of decree—Attachment of property—Payment into court of money due under decree—Civil Procedure Code, s. 295—Assets realized by sale or otherwise.

G and *C* held decrees against *B*, and took out execution of them, and the judgment-debtor's property was attached, but no sale took place. The judgment-debtor paid into court the sum of Rs 1, 200 on account of *G's* decree.

Held that *G* was entitled to the sum of Rs. 1,200 paid into court by the judgment-debtor, and it could not be regarded as assets realized by sale or otherwise in execution of a decree, so as to be rateably divisible between the decree holders under s. 295 of the Civil Procedure Code, inasmuch as it could not be said that there was a realization from the property of the judgment-debtor.

Purshotamdass Tribhovandass v. *Mahanant Surajbharthi Haribharthi* (1) approved.

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* Second Appeal No. 1663 of 1884, from a decree of Babu Pramoda Charan, Judge of the Small Cause Court, Agra, exercising the powers of a Subordinate Judge, dated the 26th August 1884, affirming a decree of Lala Baij Nath, Munsif of Agra, dated the 9th May, 1884.

(1) I. L. R., 6 Bom., 588.

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GOPAL DAI v. CHUNNI LAL.

THE plaintiff in this suit, Gopal Dai, a Hindu widow, obtained a decree against her husband's father and brother for a maintenance allowance of Rs. 120 per mensem. In February, 1883, she applied for execution of this decree, praying to recover Rs. 1,200, arrears of the allowance, by the attachment and sale of a village belonging to the judgment-debtors. The village was attached, and then the judgment-debtors paid into court the amount of the arrears. By the order of the Court executing the decree the amount was rateably divided between the plaintiff and other persons who held decrees against the plaintiff's judgment-debtors, and had applied for execution thereof. One of these decree-holders was the defendant in this suit, Chunni Lal, to whom Rs. 844-3-9 were paid. The plaintiff sued to recover this amount from him. Both the lower Courts held that the defendant was entitled to the amount under the provisions of s. 295 of the Civil Procedure Code.

In second appeal by the plaintiff it was contended on her behalf that the provisions of s. 295 were not applicable under the circumstances.

Pandit *Ajudhia Nath* and Babu *Jogindro Nath Chaudhri*, for the appellant.

Mr. *W. M. Colvin*, for the respondent.

OLDFIELD and BRODHURST, JJ.—We are of opinion that s. 295 of the Civil Procedure Code does not apply to this case.

The plaintiff and defendant held decrees against Babu Bishambhar Nath, and took out execution of them, and the judgment-debtor's estate, mauza Barara, was attached, but no sale took place. The judgment-debtor paid into court the sum of Rs. 1,200 on account of the plaintiff's decree, and the question is whether the plaintiff is entitled to this sum, or it was rateably divisible among the decree-holders.

We think that this sum cannot be held to be assets realized by sale, or otherwise, in execution of a decree, so as to be rateably divisible under s. 295. It cannot be said that there was a realization from the property of the judgment-debtor, and so the payment does not come within the meaning of s. 295. The payment would not release the property from attachment, or stop sale in execution of the defendant's decree.

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We concur in the view of the law taken by the Bombay High Court in *Purshotamdass Tribhovandass* v. *Mahanant Surajbharthi* (1), which supports the view we take here.

The plaintiff is therefore entitled to a decree, and we reverse the decree of the lower Court, and decree the claim with all costs.

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

1885 *December* 15.

THE LAND MORTGAGE BANK OF INDIA (PLAINTIFF) *v.* MOTI AND OTHERS (DEFENDANTS) *

License, revocation of—Works of permanent character executed by licensee—Act V of 1882 (*Easements Act*), *ss.* 60, 61.

In a suit by a zamíndár to have his right declared to build a house on some waste land in the mauza, the defendants, who were tenants in the mauza, resisted the claim on the ground that they had built wells and water-courses on the land, and had a right also to use it as a threshing-floor and for stacking cow-dung.

Held that the defendants having acquired no right adverse to the plaintiff as owners, by prescription or otherwise, in the land, their right of use could only be as licensees of the plaintiff; and although he could not interfere with their right to the wells, which were works of a permanent character, and on which the defendants had incurred expenses, he could revoke the license as to the other use claimed of the land, and his claim to build the house should therefore be decreed.

THE facts of this case are stated in the judgment of the Court.

Babu *Jogindro Nath Chaudhri*, for the appellant.

The respondents were not represented.

OLDFIELD and BRODHURST, JJ.—The claim is by a zamíndár to have his right declared to build a house on some waste land in the mauza. Defendants are tenants in the mauza, and assert that they have built wells and water-courses on this land, and have a right also to use it as a threshing-floor and for stacking cow-dung. On these grounds they resist the claim.

The Court below admits that the defendants have no proprietary right in this land, but has dismissed the claim on the ground that they have acquired a right to use it for the purposes claimed.

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* Second Appeal No. 61 of 1885, from a decree of Rai Cheda Lal, Subordinate Judge of Farukhabad, dated the 10th December, 1884, modifying a decree of Maulvi Muhammad Anwar Husain, Munsif of Kaimganj, dated the 13th June, 1884.

(1) I. L. R., 6 Bom., 588.