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any of the other cases which have been cited, inconsistent with the opinion which we have formed as to the effect of the bond in question. It is said that the bond cannot be treated as creating a charge upon the property which was of Amari Koeri, because it does not describe by metes and bounds or by name the immoveable property which it may have been intended to hypothecate. We are satisfied that the words used in the bond as indicating the property which was intended to be subject to the charge were sufficiently specific and certain to include, and were intended to include, all the property of Amari Koeri. This being our view as to the construction of the bond, the maxim "*certum est quod certum reddi potest*" applies, and we held that the bond did create a charge upon the immoveable property of Amari Koeri in respect of the principal and interest in question, that such principal and interest were monies charged upon immoveable property within the meaning of art. 132 of the Indian Limitation Act of 1877, and that, so far as the claim is to enforce payment of such principal and interest by recourse to the immoveable property which was of Amari Koeri, the action was brought within time. In confirmation of the opinion above expressed as to the effect of the bond, we may refer to the judgment of Mr. Justice Fry in the case of *Tadman v. D'Epineuil* (1).

This appeal is allowed. The case will go back to the Judge of Gházipur, to be disposed of by him according to law upon the other questions of law and upon the questions of fact involved in the appeal from the decree of the Munsif. Costs will be costs in the cause.

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

1884
December 13.

THAKUR DAS AND ANOTHER (PLAINTIFFS) v. KISHORI LAL (DEFENDANT).^{*}
Civil Procedure Code, s. 549—Security for costs—Amount of security not fixed—Dismissal of appeal—Practice.

Section 549 of the Civil Procedure Code contemplates an order by which some ascertained amount of security is required.

^{*} Second Appeal No. 1936 of 1885, from a decree of C. W. P. Watts, Esq., District Judge of Saharanpur, dated the 20th August, 1885, confirming a decree of Maulvi Muhammad Maksud Ali Khan, Subordinate Judge of Saharanpur, dated the 16th June, 1885.

The last paragraph of the section seems to contemplate that, on failure to furnish security within the time fixed, an order for rejecting the appeal should be obtained from the Court that gave the order to furnish security.

Upon the application of the respondent in a second appeal pending before the High Court, an order was passed requiring the appellant to furnish security for the costs of the appeal, and to lodge such security at any time before the hearing. This order purported to be made under s. 549 of the Civil Procedure Code, but neither the application nor the order stated the amount of the security required. At the hearing of the appeal, no security having been lodged, the respondent objected that, with reference to the terms of s. 549, the Court had no option but to dismiss the appeal.

Held that the objection had no force, no such order as was contemplated by s. 549 having been made.

Held also that the proper course was to have applied to the Judge who passed the order for security, at any time before the case came on for hearing, for the rejection of the appeal, and that it was too late at the hearing to ask the Court to reject the appeal.

THIS second appeal was filed on the 24th December, 1885. Notice was issued to the respondent on the 9th January, 1886. On the 19th April, 1886, the respondent applied to Tyrrell, J., sitting to take applications, &c., that the appellants should be required to furnish security for the costs of the appeal. This application did not state the amount of security which should be required. Notice to show cause why this application should not be granted was issued to the appellants. On the 13th May, 1886, the appellants having appeared, Tyrrell, J., made the following order : —“ I am satisfied that the respondent is justified in asking for an order under s. 549 of the Civil Procedure Code, and it is ordered accordingly. The security may be lodged at any time before hearing.”

The appeal was ready for hearing on the 5th June, 1886, and came on for hearing before Oldfield and Brodhurst, JJ., on the 14th December, 1886.

On behalf of the respondent, it was objected that the appeal should be dismissed, as the appellants had not furnished security for costs within the time fixed, and the Court, therefore, had no option but to dismiss it. Reference was made to *Haidri Bai v. The East Indian Railway Co.* (1) and *Budri Narain v. Sheo Koer* (2).

(1) I. L. R., 1 All. 687. (2) I. L. R., 11 Calc. 716

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TEJENDR DAS
v.
KISHORI LAL.

Mr. *J. Simeon*, for the appellants.

Mr. *A. Strachey*, for the respondent.

OLDFIELD, J.—A preliminary objection to the hearing of this appeal has been preferred by the respondent, which has reference to s. 549 of the Code. The respondent, it appears, on the 19th April last, applied for an order that the appellants should be required to give security for the costs of the appeal. No amount was stated as the security required, and on the 13th May following, a Judge of this Court made an order on this application in the following words:—"I am satisfied that the respondent is justified in asking for an order under s. 549 of the Civil Procedure Code, and it is ordered accordingly. The security may be lodged at any time before hearing."

The case has now come on for hearing to-day, and the respondent objects to the hearing, and urges that in consequence of security not having been lodged, this Court should reject this appeal.

In my opinion the objection has no force. I do not find that any order, such as is contemplated in s. 549, has been made. That section contemplates an order by which some ascertained amount of security is required. In this order no amount of security was named which the appellants had to provide, the amount being probably left to be fixed on further application, and therefore it became impossible for appellant to furnish security. This arose from the remissness of the respondent in not moving the Court to fix the amount. Further, the respondent, in my opinion, should have obtained an order for rejecting the appeal from the Court which directed security to be furnished under s. 549. The last paragraph of s. 549 seems to contemplate that an order for rejecting the appeal should be obtained from the Court that gave the order to furnish security, and I am inclined to think that the proper course was to have applied to the Judge who passed the order at any time before the case came on for hearing, and it seems to me to be too late when the case is called on for hearing to ask this Court to reject the appeal. The object of furnishing security is, I suppose, that the respondent should not run the risk of loss by incurring costs, but on the day the appeal comes on for hearing

those costs have been incurred, or the greater portion of them. On the above ground, I would reject the application.

BRODHURST, J.—I entirely concur with my brother Oldfield that this preliminary objection must be rejected.

[The appeal was then heard and dismissed.]

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

SANT LAL AND ANOTHER (OBJECTORS) v. RAMJI DAS AND OTHERS
(DECREE-HOLDERS). *

Sale in execution of decree—Setting aside sale—Incumbrance—“Saleable interest”—Civil Procedure Code, s. 313.

The fact that property sold in execution of a decree is incumbered, even when the incumbrance covers the probable value of the property, is not sufficient to sustain a plea that the person whose property is sold had no saleable interest therein. S. 313 of the Civil Procedure Code contemplates that either the judgment-debtor had no interest at all, or that the interest was not one he could sell; and the fact that the property may fetch little or nothing if sold does not affect the question. *Naharmul v. Sadut Ali* (1) distinguished. *Pratap Chunder Chuckerbutty v. Panioty* (2) referred to.

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

The Hon. Pandit *Ajudhia Nath* and Pandit *Nand Lal*, for the appellants.

The Hon. T. Conlan, Mr. *Abdul Majid*, and Munshi *Hanuman Prasad*, for the respondents.

OLDFIELD, J.—This is an appeal from an order refusing to set aside a sale, and made with reference to s. 313 of the Civil Procedure Code.

The sale was of half a house belonging to the judgment-debtors, which was sold in execution of a decree for Rs. 8,937, and was bought by the appellants for Rs. 5,751. The appellants ask that the sale be set aside, on the ground that the judgment-debtors had no saleable interest in the property, there being a mortgage on the property amounting to a sum exceeding its market-value.

In my opinion this is no ground for setting a sale aside under s. 313. The fact that the property is incumbered, even when the

* First Appeal No. 195 of 1886, from an order of Babu Brijpal Das, Subordinate Judge of Meerut, dated the 28th August, 1886.

(1) 8 Calc. L. R., 468. (2) L. L. R., 9 Cal., 506.