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RADHA BAI
v.
NATHU RAM.

being trained lawyers they are able to keep present to their minds, in spite of the lax use of phrases and conjunctions whether disjunctive or conjunctive, and of the disregard of the proper use of pronouns.

In the present case, if it had not been my good fortune to agree so entirely with what has fallen from the learned Chief Justice and my brother, Straight, I should, in view of the rules framed by the Government of India, have had to think not once, but twice, as to whether or nor they were "consistent" with the enactment within the meaning of ss. 55 and 56 of the Stamp Act (I of 1879).

I am saved from that necessity by the manner in which the case has been dealt with by the learned Chief Justice and my brother Straight, and I have only to say that I agree with their order.

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May 13.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Brodhurst.

SHIB SINGH (DEBENDANT) v. SITA RAM (PLAINTIFF).*

Execution of decree—Attachment of debt—Order prohibiting creditor from recovering debt—Suit for rent under attachment—Civil Procedure Code, s. 268 (a)—Act XV of 1877 (Limitation Act), s. 15—Injunction or order staying a suit.

S. 268, clause (a) of the Civil Procedure Code, does not mean that, while a debt is under attachment, the person to whom the debt was originally owing, should be barred from bringing a suit in respect of it. What it prohibits is the recovery of the debt, and the payment of it by the debtor to the creditor.

Scemle.—An order of attachment under s. 268 of the Civil Procedure Code is not an injunction or order staying a suit within the meaning of s. 15 of the Limitation Act (XV of 1877).

THE plaintiff in this case, Sita Ram, was zamindár and lambár-dár of a village Leha Alampur, and the defendant Shib Singh was his tenant. The suit was for recovery of Rs. 2,027-11-4, arrears of rent, under s. 93 (a) of the North-Western Provinces Rent Act (XII of 1881), and was instituted in the Court of the Assistant

* Second Appeal No. 892 of 1888 from a decree of H. F. Evans, Esq., District Judge of Aligarh, dated the 6th March 1888, confirming a decree of Maulvi Muhammad Karim, Assistant Collector of Aligarh, dated the 30th March 1887.

Collector of Aligarh. It appeared that the rent for 1291 fasli, one of the years in respect of which rent was claimed, had been attached, by an order passed on the 2nd August 1886, in execution of a simple money decree held against the plaintiff by Kumar Daryao Singh. The order of attachment was passed under s. 268 (a) of the Civil Procedure Code. On behalf of the defendant it was contended that the effect of this order was to bar the present suit so far as it sought recovery of the rent for 1291 fasli.

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The Court of first instance disallowed this plea, observing:—“Though the rent was attached in execution of a decree against the plaintiff, he has yet a right to sue. The attachment means that the money should not be paid to the plaintiff. The plaintiff is by all means competent to sue.” The Court decreed the claim. On appeal by the defendant, the District Judge of Aligarh concurred in the view taken by the Assistant Collector. He said:—“The second ground of appeal is that, under the provisions of s. 268 of the Civil Procedure Code, the rents of 1291-92 fasli having been attached, the respondent could not sue for them. This is untenable. The creditor is not barred from suing for the debt, whatever effect s. 268 might have in preventing his taking out execution of the decree. The District Judge dismissed the appeal. The defendant presented a further appeal to the High Court.”

Mr. *A. H. S. Reid*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondent.

EDGE, C. J., and BRODHURST, J.—This was a suit for rent. The plaintiff, it appears, was lambardár, but whether he was suing as the agent of the co-sharers, or as the zamindár, and himself entitled to the rent sued for, does not appear. That question may have an important bearing in the execution department. The rent in question had been attached by one Kuar Daryao Singh, on the 2nd August 1886, for a debt by the present plaintiff to him. It is contended that by reason of s. 268 of the Code of Civil Procedure that attachment so long as it existed barred a suit by the plaintiff for the rent which was attached. That contention is mainly based on cl. (a) of s. 268 of the Code of Civil Procedure. If the Legis-

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lature had intended that, whilst a debt was under attachment, the person to whom the debt was originally owing should be barred from bringing a suit in respect of it, we would expect the Legislature to have used some such words as:—"During the existence of the attachment no suit shall be brought by the creditor against the debtor in respect of the debt attached." What s. 268 prohibits is the recovery of the debt and the payment of it by the debtor to the creditor. The debtor had an easy course provided for him under s. 268, as under that section he could have paid the money into Court and thus have avoided liability in this suit. That was not done here. Mr. *Chaudhri* contends, and we think with force, that if his client, the plaintiff, had not brought the suit when he did, a suit subsequently brought might be barred by limitation. On the other hand, Mr. *Reid* for the defendant-appellant says that the case would come within s. 15 of the Limitation Act. We do not think the case would be within s. 15 of the Limitation Act. We think it would be to read a good deal into s. 268 of the Code of Civil Procedure if we were to hold that an order of attachment under that section was equivalent to an injunction or an order staying a suit. The point seems to be a novel one, and, giving it our best attention, that is the opinion at which we have arrived. We express no opinion as to what may be the result of any proceedings in execution. We dismiss the appeal with costs.

Appeal dismissed.

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May 20.

Before Mr. Justice Mahmood.

SOHNA (OBJECTOR) v. KHALAK SINGH AND ANOTHER (PETITIONERS).

Jurisdiction—Exercise by Subordinate Judge of jurisdiction of District Court—Appeal—Bengal Civil Courts Act (XII of 1887), ss. 23, 24—Power of appellate Court to add respondent—Limitation—Civil Procedure Code, s. 550—Minor—Guardian—Bengal Minors Act (XL of 1858), s. 7.

The words in s. 24 of the Bengal Civil Courts Act (XII of 1887) "subject to the rules applicable to like proceedings when disposed of by the District Judge," include the rules relating to appeals. Therefore orders passed under that section by a Sub-

* First appeal No. 167 of 1888 from an order of Maulvi Shah Ahmadullah Subordinate Judge of Cawnpore, dated the 18th August 1888.