

and determined. There may arise cases in which owing to the absconding of offenders the trial at an early date of an approver who had not complied with the conditions on which the tender was made appears necessary or expedient, and I am not prepared to say that in such cases the result of the trial of the principal is always to be waited for. The point does not arise for determination, and I do not determine it. But where, as in the present instance, no such difficulty occurred, the provisions of s. 337 of the Criminal Procedure Code should have been strictly complied with, and in every case connected with the offence, namely, the murder of Mohan Lal, Sudra should have been examined as a witness, and until he had been so examined, his trial for any offence in connection with that murder should not have taken place. I accordingly quash the commitment and return the record. The District Magistrate of Jhansi can of course take any steps open to him in law for the further trial of Sudra if such trial appear necessary in the interests of public justice.

1891

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 QUEEN-  
EMPERESS  
v.  
SUDEA.
 

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## APPELLATE CIVIL.

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1892

January 5.

*Before Mr. Justice Mahmood.*

RAM SUKH DAS AND ANOTHER (DEFENDANTS) v. TOTA RAM (PLAINTIFF)\*

*Cross-decrees—Set-off - Civil Procedure Code, s. 246.*

Where a decree-holder holds a decree against several persons jointly, one of whom holds a decree against him singly, both decrees being executable in the same Court, it is competent to the holder of the joint decree, under the provisions of s. 246 of the Code of Civil Procedure, to plead such decree in answer to an application for execution of the decree against him singly.

THE facts of this case sufficiently appear from the judgment of Mahmood, J.

Mr. *D. Banerji*, for the appellants.

Mr. *Niblett*, for the respondent.

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\* Second Appeal No. 203 of 1891, from a decree of Babu Abinash Chandar Banerji, Subordinate Judge of Agra, dated the 18th December 1880, reversing a decree of Babu Baij Nath Prasad, Munsif of Mahaban, dated the 14th June 1890.

1892  
 RAM SUKH  
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 v.  
 TOTA RAM.

MAHMOOD, J.—The plaintiff-respondent, Tota Ram, obtained a decree for Rs. 192-4-0 against Chunni and four other persons. On the other hand Chunni obtained a decree for Rs. 43-14-0 against the above-named Tota Ram. Both these decrees were capable of execution in the Court of the Munsif of Mahaban, Tota Ram's decree having been transferred to that Court.

Before Tota Ram could take any action to execute his decree his judgment-debtor sold the decree to Ram Sukh, one of the defendants-appellants, on the 30th of July 1888, and upon Tota Ram's endeavouring to execute his decree he was met by objections by the said Ram Sukh, and those objections prevailed on the 20th of January 1889. Tota Ram then instituted the present suit to establish his right to execute his decree against Chunni's decree in the hands of the defendant Ram Sukh.

The first Court dismissed the suit, holding it to be barred by s. 244 of the Code of Civil Procedure, but the lower appellate Court has given sufficient reasons for holding that the section does not apply, and to this finding no objection is taken here before me on the other side.

The main ground upon which Mr. *Dwarika Nath Banerji* has rested his argument on behalf of the appellants is that, although under s. 233 of the Code of Civil Procedure, Ram Sukh must be taken to have purchased Chunni's decree subject to such equities as Tota Ram had against such decree, yet, inasmuch as Tota Ram's decree was not solely against Chunni, but also jointly against four others, therefore no such equities arose as would enable the two decrees to be dealt with under s. 246 of the Code of Civil Procedure. In support of his contention the learned counsel has invited my attention to illustration (b) to the section.

I am of opinion that the learned Subordinate Judge has arrived at correct conclusions. It is true that Tota Ram's decree was against Chunni and four others jointly, but since the decree of Chunni was solely against Tota Ram there seems no reason why Tota Ram should not be entitled to resist the execution of Chunni's decree by reason of his larger decree above mentioned. The illustra-

tion contemplates cases where there are judgment-creditors and not cases where the sole judgment-debtor is the sole creditor of another decree. I think this distinction is recognizable, and in *Hury Doyal Guho v. Din Doyal Guho* (1) it was actually ruled that a judgment-debtor may set-off against the amount of the decree against him the amount of a decree which he has obtained against the decree-holder and other persons.

I think the effect of the learned Subordinate Judge's decree in this case is consistent with the view which I have expressed, I therefore dismiss the appeal with costs.

*Appeal dismissed.*

## APPELLATE CIVIL.

1892  
 RAM SUKH  
 DAS  
 v.  
 TOTA RAM.

1892  
 January 8.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Knor.*

BECHAN RAI AND OTHERS (DEFENDANTS) v. NAND KISHORE RAI (PLAINTIFF) \*

*Conditional sale—Wājib-ul-arz—Pre-emption.*

The pre-emptional rights of the parties to a deed of conditional sale cannot be affected by a *wājib-ul-arz* prepared subsequently to the execution of the deed of conditional sale, but prior to the sale becoming absolute, they not being parties to the *wājib-ul-arz*, and the *wājib-ul-arz* not apparently indicating any pre-existing custom of pre-emption in the village. *Raghubir Singh v. Nandu Singh*, (2) distinguished.

The facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of Edge, C. J.

Munshi *Jwala Prasad* and Munshi *Gobind Prasad*, for the appellants.

Pandit *Sundar Lal*, for the respondent.

EDGE, C. J.—This was a pre-emption suit brought under a *wājib-ul-arz* in respect of a sale of a share within the village. The sale arose in this way. The share-holder in the village executed in favour of the present vendees two deeds of conditional sale. Sub-

\* Second Appeal No. 1691 of 1888 from a decree of Rai Lalta Prasad, Subordinate Judge of Ghazipur, dated the 13th August 1888, modifying a decree of Maulvi Sayyid Zain-ul-abdin, Munsif of Korantadih, dated the 9th January 1888.

(1) I. L. R., 9 Calc., 479.

(2) Weekly Notes, 1891. p. 134.