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of a crime. In this case, if the *razai* had not been concealed or destroyed, its presence or existence would have been no evidence of the murder. Again, in our opinion, on the construction of the section, the person who is concerned as a principal cannot be convicted of the secondary offence of concealing evidence of the crime. The conviction must be quashed and the prisoner released.

Conviction quashed.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Tyrrell.

KASHI PRASAD AND ANOTHER (DECREE-HOLDERS) v. MILLER (JUDGMENT-DEBTOR).*

Execution of decree—Attachment of property—Judgment-debtor declared an insolvent—Claim by official assignee to attached property—Appeal from order disallowing claim—Statute 11 & 12 Vic., c. 21, ss. 7, 49—Civil Procedure Code, ss. 244, 278—"Representative" of judgment-debtor.

A decree-holder, having attached the property of his judgment-debtors in execution of the decree, obtained an order for sale of the attached property. Prior to sale, the judgment-debtors made an application to be declared insolvents, and obtained an order under Stat. 11 and 12 Vic, c. 21, s. 7, by which their property was vested in the Official Assignee. An application was then made by the Official Assignee to the Court in which the execution of the decree was pending, for the release of the property from attachment, and that the property might be made over to him. The Court dismissed the application. On appeal, the District Judge reversed the first Court's order.

Held that the matter did not come before the Court of first instance under s. 49 of Stat. 11 and 12 Vic., c. 21, inasmuch as that section refers to cases where the insolvent's schedule has been filed, and to debts or demands admitted therein and, in the present case, no schedule had been filed at the time of the Official Assignee's application; and the Court could therefore only entertain the application under the provisions of the Civil Procedure Code relating to the execution of decrees.

Held that the Official Assignee could not be held to be a representative of the judgment-debtors within the meaning of s. 244 of the Civil Procedure Code, and his application was not one relating to the execution, discharge, or satisfaction of the decree.

Held that the Court of first instance had only jurisdiction in the matter under s. 278 of the Code, and disposed of it under that section, and that the District Judge had no jurisdiction to entertain the appeal.

* Second Appeal No. 69 of 1884, from an order of A. Sells, Esq., District Judge of Cawnpore, dated the 10th March, 1884, reversing an order of Maulvi Farid-ud-din, Ahmad, Subordinate Judge of Cawnpore dated the 6th September, 1883.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the Court.

Pandit *Sundar Lal*, for the appellant.

Mr. *Greenway* and the *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the respondent.

OLDFIELD and TYRRELL, JJ.—It appears that the firm of *Gaya Prasad* and *Kashi Prasad*, represented by appellant, obtained a decree against *Chota Lal* and *Sheo Prasad* for money due, on the 31st March, 1883. They had, on the 2nd March, 1883, attached property of the judgment-debtors before judgment, and the attachment continued in force after decree, and they took out execution, and on the 4th April, 1883, obtained an order for the sale of the attached property.

The judgment-debtors, prior to sale, applied on the 11th April, 1883, in the Calcutta High Court, to be declared insolvents, and on the 11th April, 1883, the High Court made an order under Stat. 11 and 12 Vic., c. 21, s. 7, vesting their property in the Official Assignee, who is the respondent before us.

On the 2nd June, 1883, the Official Assignee made an application in the Court of the Subordinate Judge of Cawnpore, where the execution of the decree was pending, for the release of the property from attachment, and that the property be made over to him. On the 6th September, 1883, the Subordinate Judge dismissed the application, and the Official Assignee appealed to the Judge, who reversed the order and allowed the application. The judgment-creditors now prefer an appeal to this Court from the Judge's order. There are two contentions raised—(1) that no appeal lay in the matter to the Judge; (2) that the judgment-creditor, by reason of having attached the property of his judgment-debtors, and obtained an order for sale before the date of the vesting order, which vested the property in the Official Assignee, obtained rights in the property which cannot be affected by the vesting order. In order to determine the first question, we have to see how the application on the part of the Official Assignee came before the Court executing the decree, and what jurisdiction it had in the matter. The order vesting the real and

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personal estate of the insolvents in the Official Assignee was made under s. 7, Statutes. 11 and 12 Vic., c. 21, and s. 49 enables the Court in which any action, suit, execution or process is pending in respect of a debt or demand contained in an insolvent's schedule, to stay the proceedings or set aside or suspend the execution or process, so far as respects the debt or demand, until further order of the Court which made the vesting order. But the matter did not come before the Subordinate Judge under this section. It refers to cases where the insolvent's schedule has been filed, and to debts or demands admitted in the schedule, and no schedule had been filed at the time of the Official Assignee's application. The Subordinate Judge could therefore only entertain the application under the provisions of the Code of Civil Procedure relating to execution of decrees. S. 244 relates to questions between parties to the suit in which the decree was passed or their representatives relating to the execution of the decree; and s. 278 to objections by third parties to attachment of property made in execution of the decree. Now, if the application is to be considered as one to be dealt with, and which was dealt with, under s. 278 and succeeding sections, the order made on it was not appealable to the Judge, and the appellant's contention that the Judge had no jurisdiction is valid. If, on the other hand, the application was one to be dealt with under s. 244, the Subordinate Judge would have jurisdiction, and the appeal was cognizable by the Judge. Did, then, the matter of the application relate to questions between the parties to the suit or their representatives, and in regard to the execution, discharge or satisfaction of the decree? In other words, can the Official Assignee be held to be a representative of the judgment-debtor within the meaning of s. 244, and does his application relate to the execution, discharge or satisfaction of the decree? We do not think this can be held. The Official Assignee did not apply to the Court as one representing the judgment-debtor in regard to any matter relating to the execution, discharge or satisfaction of the decree, but as a third party in whom the insolvent debtor's property had become vested under the Insolvent Debtors Act, and his object was to have the attachment withdrawn and the property made over to him, not for any purpose of execution of the decree, but that he might deal

with it under the provisions of the Act for the benefit of the general body of the creditors. As a matter of fact, he appears to have made his application under s. 278, and it was so treated by the Subordinate Judge. Nor can the Official Assignee be considered to be a representative of the judgment-debtor within the meaning of s. 244. He represents the general body of the creditors for whose benefit the property of the judgment-debtor is vested in him in trust, and it was in this capacity, as representing them and for their benefit, that he made his application.

The Judge has, therefore, erred in regarding the respondent as a representative of the judgment-debtor and treating the matter as one to be dealt with under s. 244, Civil Procedure Code, the order on which was open to appeal; and we cannot find that he is supported by the case he refers to (1), as there was no ruling in that case to the effect that the Official Assignee can be regarded as a representative of the judgment-debtor, and an application of this nature is one to be dealt with under s. 244, Civil Procedure Code.

We are of opinion, therefore, that the Subordinate Judge had only jurisdiction in the matter under s. 278, and he disposed of the application under that section, and the Judge had no jurisdiction to entertain the appeal. It is not necessary for us to consider the second question raised. We decree the appeal and set aside the Judge's order with costs.

Appeal allowed.

Before Mr. Justice Brothurst and Mr. Justice Tyrrell.

KOLAI RAM AND ANOTHER (PLAINTIFFS) v. PALI RAM AND OTHERS
(DEFENDANTS)

1885
May 9.

Amendment of decree—Judgment awarding interest for period prior to suit—Decree directing interest to be paid from date of suit—Civil Procedure Code, ss. 206, 209.

The judgment in an appeal adjudged interest to be paid for the period prior to the institution of the suit only. The decree contained an order for payment of interest from the date of the suit onwards.

Held that no variance with the judgment, within the meaning of s. 206 of the Civil Procedure Code, was involved in the additional order contained in the decree.

(1) *Miller v. Mon Mohun Roy*; I. L. R., 7 Calc. 213.