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the effect that as the applicant has asked to withdraw from the application he be adjudged to pay the costs of the opposing creditors. It follows therefore that any condition imposed by the Judge as to costs being paid precedent to permission to withdraw was without jurisdiction and must be regarded as mere surplusage. The proceedings determined on the 22nd of June 1891, and no longer subsisted after that date for any purpose whatsoever. At the hearing it was contended that an applicant for insolvency finding the case going against him, and after trouble taken by the creditors to prove fraud, might, if he could withdraw unconditionally, by so doing escape the penalties provided by law under section 359 for the punishment of fraudulent debtors. Such an argument overlooks the existence in the Code of s. 643, which in our opinion does provide for and meet such a contingency. In view of the above finding it becomes unnecessary for us to take up the question of fraud, and we would only remark here that up to the 22nd of June 1891 no fraud had been proved, and no evidence of fraud given even after that date. The affidavit filed by the Bank and the very qualified admission made by the pleader for Hafiz Syed Haidar Shah, do not amount to proof of fraud. For these reasons we allow this appeal and set aside the order of the Court below with costs. There was an application filed in connection with this appeal by one Shankar Lal. It was not supported, and therefore it stands dismissed.

Appeal decreed.

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January 28.

Before Mr. Justice Blair and Mr. Justice Burkitt.

ABDUR RAHMAN (DECREE-HOLDER) v. SHANKAR DAT DUBE (OBJECTOR).*

Civil Procedure Code, s. 234--Execution of decree—Attachment during lifetime of judgment-debtor—Application after death of judgment-debtor to bring his representatives on to the record of the execution proceedings—Procedure.

In execution proceedings if the decree-holder desires to proceed after the death of the judgment-debtor against property which has not been attached during the lifetime of the judgment-debtor, his proper course is that marked out by s. 234 of Act No XIV of 1882: but if the property has been attached during the lifetime of

*First Appeal No. 248 of 1892, from an order of Kuar Bharat Singh, Officiating Judge of Jaunpur, dated the 3rd September 1892.

the judgment-debtor, it then comes into the lands of the law and the attachment does not abate on the death of the judgment-debtor, and for the purpose of proceeding against, and if necessary selling, that property it is not necessary to implead anyone as a legal representative.

The facts of this case were as follows :—One Abdur Rahman had obtained a money decree against Raja Hari Har Dat Dube, on the 30th of April 1890, for a sum of Rs. 820-8-0. On the 15th of November 1890, two boxes containing shawls were ordered to be attached, and the attachment was effected in the month of December. The sale was stayed under an order of the District Court pending the disposal of the suit in which the judgment-debtor was one party and his brother Shankar Dat, the present respondent, was the other. On the 23rd of June 1891, an application was made to strike off the execution proceeding, but to maintain the attachment, with leave to apply again for further steps in aid of execution. The case was ordered to be struck off, the attachment maintained, and the permission prayed for given. A further application was made in relation to the same attachment. The attachment still remained subsisting at the time of the death of the judgment-debtor, on the 13th of January 1892. A further application was made in execution for the attachment of a sum of 1,000 rupees payable under an agreement between the deceased judgment-debtor and the present respondent, then due for the month of November of that year. The Court made an order prohibiting Raja Shankar Dat from paying that money to the deceased judgment-debtor. The order was still subsisting at the time of the death of the judgment-debtor. On the 11th of December 1891, an application was made that Raja Shankar Dat be ordered to pay into Court the sum of Rs. 500, then due from him to the judgment-debtor. An order was made granting that application. Notice was duly served on Raja Shankar Dat's agent. On the 6th of January 1892, an application was made for the attachment of a sum of money (about 200 rupees) then deposited in the Rent Court and standing to his credit, and an order of attachment was issued accordingly. At a date subsequent to these attachments and while they were all three subsisting, Raja Hari Har Dat, died. The

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present appeal arises out of an application made to the Court in which the proceedings then were to put upon the record, as legal representative of the deceased, his brother, the Raja Shankar Dat, and his widow Rani Sahodra Kuar. Objection was taken upon the part of Raja Shankar Dat, but not upon the part of the widow. The Court, referring to a judgment already delivered, and which had relation to the execution of a decree obtained by another plaintiff against the judgment-debtor in the case, refused to put the names upon the record as representatives, alleging that he did so for the reason given in the previous case. It appears that the judge probably did not notice that the one case was in no sense upon all fours with the other. In that case execution was sought against the zamindari property, and such property was not at the time of the decease of the judgment-debtor under attachment. The Court refused to put either of the names upon the record. It is against that order that Mr. *Ghulam Mujtaba* appeals.

After stating the facts as above, the judgment of Blair J. thus continued :—

Maulvi *Ghulam Mujtaba*, for the appellant.

Mr. *T. Conlan*, Mr. *Abdul Majid* and Pandit *Sundar Lal*, for the respondent.

It appears to us that the ruling of the Full Bench of this Court in the case of *Sheo Prasad v. Hira Lal* (1) is a binding authority upon the question at issue in this matter. It is needless to follow in detail the erroneous reasons given by the Judge below in dealing with this matter. It is clear to us that this is a case which is really decided by the ruling above referred to. It was there held by the Full Bench that s. 234 of the Code of Civil Procedure applied only to cases in which after the death of the judgment-debtor the decree-holder sought to bring to sale property which was of the judgment-debtor in his lifetime, and which was not at the time of his death under attachment in the suit of the judgment-creditor. In the view of the Court which decided that case section 234 contemplates that the property which was of the judgment-debtor in his lifetime may

(1) I. L. R., 12 All. 440.

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not only have come to the hands of his legal representative, but may, before the making of the application under the section have not been duly disposed of by the representative. In this case it appears to us that no item of the property attached has come into the possession of the legal representative, whose liability under s. 234 of the Code of Civil Procedure is expressly limited to the extent of the property of the deceased which has come to his hands and has not been duly disposed of. That being so, we think the Court below, though for wrong reasons, is perfectly right in refusing to put upon the record the names of the respondents as representatives of the deceased judgment-debtor. It seems to be settled law that no such representative need be put on the record. Mr. *Ghulam Mujtaba* is in our opinion entitled to take such further steps in the execution proceedings as he may be advised, and that no impediment can arise from the fact of there not being on the record any legal representative of the deceased judgment-debtor. The appeal is dismissed with costs.

BURKITT, J.—I concur in the judgment which has been pronounced and desire to add a few words only. The application made by the decree-holder on the 18th of February 1892, and the 5th of March 1893, to bring Raja Shankar Dat and Rani Sahodra Kuar on the record in the execution proceedings was properly rejected by the District Judge, not for the reasons given by him, which, in my opinion, have no bearing on the matter, but because the applications so made were applications for which the law makes no provision whatsoever. Those applications were apparently modelled on the lines of s. 368 which provides for the substitution of names in the place of the deceased defendant in a suit; but under Act No. VI of 1892 and the recent rulings of their Lordships of the Privy Council such procedure cannot be adopted in execution proceedings. In such proceedings if the decree-holder desires to proceed after the death of the judgment-debtor against property which has not been attached during the lifetime of the judgment-debtor his proper course is that marked out by s. 234 of Act No. XIV of 1882, but if the property has been attached during the lifetime of the judgment-debtor it

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then comes into the lands of the law and attachment does not abate on the death of the judgment-debtor, and for the purpose of proceeding against, and if necessary selling, that property, it is not necessary to implead any one as a legal representative. It was therefore in this case quite unnecessary to ask for an order to bring the brother and the widow of the deceased judgment-debtor on the record. It was an order which the Court had no jurisdiction to pass, and in refusing to pass it the Court was right, though, as I said before, the reasons it gave for that refusal are wrong and irrelevant.

Appeal dismissed.

REVISIONAL CRIMINAL.

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February 4.

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

QUEEN-EMPRESS v. SRI LAL AND OTHERS.

Act No. XLV of 1860 (Indian Penal Code), ss. 159, 160—Affray—"Public place."

Held that a *chabutra* which was neither a place to which the public had a right of access, nor a place to which the public were ever permitted to have access, was not, though it adjoined a public road, a "public place" within the meaning of s. 159 of the Indian Penal Code.

The facts of this case sufficiently appear from the judgment of the Court.

Mr. *Roshan Lal* and Babu *Satya Chandar Mukerji*, for the applicants.

The Government Pleader (*Munshi Ram Prasad*), for the Crown.

EDGE, C.J., and BANERJI, J.—This is an application for revision of an order of the Sessions Judge of Farakhabad dismissing the appeal of the applicants from a conviction under s. 160 of the Indian Penal Code.

The fighting appears to have taken place on a *chabutra*, which from the evidence in the Court below appears to have been private property adjoining a public thoroughfare. We infer from the evidence that that *chabutra* was neither a place to which the public had a right of access, nor a place to which the public were used to