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EMPERESS
v.
TIBBENI
SAHAL.

If the Magistrate's view were correct, it would follow that no man while he stood charged with a criminal offence could possibly be examined as a witness in any criminal trial whatever. I do not think that the Legislature intended this. In this view of the case I hold that the petitioner was entitled to have Ram Narain summoned and examined as a witness, and that he has been prejudiced by the Magistrate's refusal to summon and examine the said Ram Narain. Under these circumstances I set aside the conviction and sentence had before the Cantonment Magistrate of Allahabad, and direct that the petitioner's case be restored to his file, and that he take it up at that stage when he called on the accused for his defence, and that then with reference to the above remarks he proceed according to law.

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May 12.

APPELLATE CIVIL.

Before Mr. Justice Burkitt and Mr. Justice Dillon.

ONKAR SINGH AND ANOTHER (JUDGMENT-DEBTOR) v. MOHAN KUAR
(DECREE-HOLDER)*

Execution of decree—Civil Procedure Code, sections 320, 322A—Decree transferred for execution to Collector—Collector not authorized to hear objections to execution of decree so transferred.

Held that where a decree for money has been transferred for execution to the Collector under the provisions of section 320 of the Code of Civil Procedure, the Collector is not authorized under section 322A to hear any objection by the parties interested in the property advertised for sale to the sale of that property, nor is it any part of the Collector's duty to decide whether the property has or has not been properly attached.

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

Pandit *Sundar Lal*, for the appellants.

Babu *Jogindro Nath Chaudhri*, for the respondent.

BURKITT and DILLON, JJ.—This is a case of an execution of a decree for money. The original judgment-debtor died since the decree, and his sons have been brought on the record as his

* First Appeal No. 265 of 1897, from an order of Syod Muhammad Siraj-ud-din, Subordinate Judge of Agra, dated the 28th August 1897.

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representatives. During the course of the execution proceedings the sons, on the 29th of May, 1897, raised an objection to the execution to the effect *inter alia* that the property had not been properly attached during the life-time of their father, the original judgment-debtor. A date was fixed for hearing that objection, but neither the representatives of the judgment-debtor nor the execution creditor appeared. No steps whatever were taken to hear and decide the objections, and they were struck off. Shortly afterwards, the property being ancestral, the case was transferred to the Collector for execution under the rules framed in pursuance of section 320 of the Code of Civil Procedure. The execution application was struck off the file of the Subordinate Judge on the 9th of July, 1897. On the 20th of the same month the representatives of the deceased judgment-debtor again raised the same objection before the Subordinate Judge to the execution of the decree. On these objections the Subordinate Judge recorded an order to the effect that the case had been transferred for execution to the Collector, and that the Collector would issue a notice under section 322 A and that thereupon any person who had any objection to take in respect of the property advertised for sale could take that objection. Now in making this order the Subordinate Judge was wrong throughout, and it is so admitted by the learned advocate who appears for the decree-holder respondent. The Collector under section 322 A is not authorized to hear any objection, by parties interested in the property advertised for sale, to the sale of that property. When a money decree is transferred to the Collector for execution by sale of certain property, that property is usually attached before the decree is sent to the Collector, and the Collector may then, under section 322 A, call on all persons holding money claims against the judgment-debtor to come in and prove their claims, so as to enable the Collector to make arrangements to avoid if possible the sale of the attached property. It is no part of the Collector's duty under section 322 A to decide whether the property has or has not been properly attached. That is the duty of the Court to which the application for execution is made and

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which transmits the decree to the Collector. But the learned advocate for the decree-holder attempted to support the order of the Subordinate Judge on another ground referring to the proceedings taken on the objection of the 29th of May, 1897. His contention was that the representatives of the deceased judgment-debtor having taken their objection and having failed to prosecute it could not be further heard on the same ground. In our opinion this contention is not sound and is disposed of under the ruling in the case of *Dhonkal Singh v. Phalkar Singh* (1), in which it was distinctly laid down that where an application for execution has been simply struck off without any order adverse to the right on the merits, that application might be renewed again and again till judicially decided adversely to the applicant. The same principle applies to an objection raised by a judgment-debtor to the execution of the decree. We do not think that the fact that between the application of the 29th of May, 1897, and the 20th of July, 1897, execution was transferred to the Collector is in any way material here. We allow this appeal. We set aside the order of the Subordinate Judge, and we direct him now to take up and judicially determine the objections taken by the representatives of the deceased judgment-debtor on the 20th of July, 1897. The appellants are entitled to their costs.

Appeal decreed.

Before Mr. Justice Burkitt and Mr. Justice Dillon.

PHUL CHAND (DECREE-HOLDER) v. SHANKAR SARUP AND OTHERS
(JUDGMENT-DEBTORS).*

Civil Procedure Code, section 583—Restitution of benefit obtained under a decree subsequently reversed on appeal—Interest allowable on amount so recovered.

Where, in consequence of a decree having been reversed on appeal, the decree-holder is entitled to recover under section 583 of the Code of Civil Procedure any sum which before such decree was reversed he had been obliged

* First Appeal No. 1 of 1898, from an order of Pandit Rai Inder Narain, Subordinate Judge of Meerut, dated the 25th September 1897.