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was dismissed by the lower appellate Court. The defendants have appealed to this Court, and the only ground upon which their appeal is based is that the dismissal of the suit was improperly set aside by the Court of first instance. No objection has been taken to the decree of the lower appellate Court as regards the merits of the case.

This case is clearly governed by the concluding remarks in the judgment of this Court in *Sheo Nath Singh* v. *Ram Din Singh* (1) at p. 22. It was there said that "section 591 contemplates two things, there being a regular appeal about something else, and in that appeal the insertion of a ground of objection under section 591." It is conceded that in this case there is no appeal about anything else. The objections taken in the memorandum of appeal relate only to the order setting aside the dismissal of the suit.

Following the ruling referred to above, we sustain the objection urged on behalf of the respondents and dismiss this appeal with costs.

Appeal dismissed.

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*Before Mr. Justice Banerji and Mr. Justice Aikman.**

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June 1.

JAFRI BEGAM (OPPOSITE PARTY) v. SAIRA BIBI (PETITIONER).

Execution of decree—Civil Procedure Code, section 234—Successive deaths of judgment-debtor and his legal representative—Execution against legal representative of the legal representative.

The judgment-debtor under a simple money decree died before execution was taken out against him. Execution of the decree was sought against his legal representative, into whose hands it was found that certain of the assets of the deceased judgment-debtor had come; but before anything was recovered the legal representative, in turn, died. *Held*, that the decree-holder was entitled to execute his decree against the legal representative of the legal representative to the extent of any assets of the original judgment-debtor which might have come into her possession.

IN this case one Jafri Begam obtained a decree against Ezid Bakhsh in 1890. The decree was for Rs. 2,587. The judgment-debtor Ezid Bakhsh was a pensioned Government servant. He died before the whole of the decretal amount was realized. At his death there was a sum of Rs. 1,700 odd in deposit at the

* Second Appeal No. 43 of 1898, from a decree of B. Lindsay, Esq., District Judge of Jaunpur, dated the 18th November 1897, reversing an order of Rai Mata Prasad, Subordinate Judge of Jaunpur, dated the 8th May 1897.

(1) (1895) I. L. R., 18 All., 19.

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Jabalpur treasury, arrears of pension which had not been drawn by Ezid Bakhsh. Execution of the decree was then sought as against Muhammad Ibrahim, son of Ezid Bakhsh. He contested the application, urging that Jafri Begam's decree being held in attachment by him was not capable of execution, and further pleading that he was not liable to be proceeded against as he had not realized any portion of the estate of his deceased father. It was ruled that the decree was capable of execution, but that Ibrahim was not liable in his own person or property for the amount due under the decree. Before any further steps were taken by the decree-holders Ibrahim died. It is admitted that previous to his death he had realized the Rs. 1,700 odd from the Jabalpur treasury. On the 26th February there was an application made for execution of the decree against Musammat Saira, widow of Ibrahim. She objected on certain grounds, amongst others, that she could not be proceeded against as she was not the legal representative of the judgment-debtor. The Court of first instance (Subordinate Judge of Jaunpur) allowed the application for execution against Musammat Saira. On appeal the District Judge of Jaunpur set aside the order of the Subordinate Judge and disallowed the application for execution on the ground that such an application was not within the purview of section 234 of the Code of Civil Procedure, under which section it purported to have been made. The decree-holder thereupon appealed to the High Court.

Maulvi *Karamat Husain*, for the appellant.

Mr. *B. E. O'Conor*, for the respondent.

BANERJI, J.—We are unable to agree with the learned Judge in holding that the decree-holder appellant was not entitled to take out execution of her decree against the respondent Saira Bibi. The appellant obtained a simple decree for money against one Ezid Bakhsh. Before the decree could be executed, Ezid Bakhsh died, and after his death execution was sought against Ibrahim, the son of Ezid Bakhsh, on the allegation that Ibrahim had appropriated and not duly disposed of assets left by Ezid Bakhsh to the extent of Rs. 1,716. If Ibrahim did in fact appropriate the amount of assets alleged to have been received and not duly disposed of by him, he became personally liable to the

decree-holder to the extent of those assets, under section 234 of the Code of Civil Procedure. Ibrahim, therefore, in substance, took the place of the original judgment-debtor to the extent of those assets, and to that extent became, to all intents and purposes, the judgment-debtor to the decree. On his death his legal representative became liable to the extent of the assets appropriated by her, and the decree-holder was entitled to apply for execution against her. In this case it has been found that Ibrahim received Rs. 1,716 payable to Ezid Bakhsh, the original judgment-debtor. To the extent of that amount he became personally liable, and the decree-holder is entitled to execute his decree against the respondent, the legal representative of Ibrahim, for the realization of that amount. In this view the lower appellate Court erred in dismissing the application for execution. I do not deem it necessary to decide in this case the general question whether, in every instance when the legal representative of a deceased judgment-debtor dies before execution of the decree has been completely obtained, an application for execution may be made against the legal representative of such representative. Having regard to the facts of this particular case, I am of opinion that the application of the decree-holder as against the respondent ought to have been entertained, and that the Court below erred in dismissing it. I would allow the appeal with costs, set aside the order of the lower appellate Court with costs, and restore that of the Court of first instance.

AIKMAN, J.—I agree. In my opinion the learned Subordinate Judge was right, and the learned District Judge took a wrong view of the provisions of section 234 of the Code of Civil Procedure. If the learned Judge's view were the sound one, much injustice might result. Supposing a judgment-debtor dies leaving property amply sufficient to pay his debts, and this property passes to an only son, who is brought on the record as the legal representative of the judgment-debtor. Then, according to the District Judge, if that son died before execution can be completed, his legal representative could not be proceeded against, although the original debtor's property might be in his hands. I do not think that could have been the intention of the law. We have been unable to find any case similar to the present one. It

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appears to me, however, that when the son of the original judgment-debtor was brought on the record as his legal representative, and when it was found that that son had in his hand money of the deceased which had not been duly disposed of, the son, to all intents and purposes, became the judgment-debtor. Therefore, in my opinion, the legal representative of the son can under section 234 be proceeded against subject to the limitations therein set forth. I concur in the order proposed.

BY THE COURT.—The order of the Court is that this appeal is allowed with costs, the order of the lower appellate Court set aside with costs, and that of the Court of first instance restored.

Appeal decreed.

P.C.
J.C.
1900
February 15.
March 24.

PRIVY COUNCIL.

SAH LAL CHAND (DEFENDANT-APPELLANT) *v.* INDARJIT (PLAINTIFF-RESPONDENT).

On Appeal from the High Court for the North-Western Provinces at Allahabad.

Construction of the Indian Evidence Act, 1872, *section* 92—*Evidence admitted to contradict a recital of receipt of consideration in a deed of sale—Oral agreement.*

The Judicial Committee, approving the decision of the High Court on the point, regard it as settled law that where there has been a false acknowledgment by recital in a deed of sale of the payment by the purchaser of the consideration money, and its receipt by the vendor, it is open to the latter to prove that no consideration money was actually paid, notwithstanding anything in section 92 of the Indian Evidence Act, 1872. That section does not enact that no statement of fact in a written instrument is to be contradicted by oral evidence.

Where the consideration money had been acknowledged to have been paid by a recital in the sale deed to that effect, *Held* that it was no infringement of the above section for a Court to accept proof that, by a collateral arrangement between vendor and purchaser, the consideration money remained with purchaser, in his hands for the purposes and under the conditions agreed upon between them.

APPEAL from a decree (2nd June 1896) of the High Court (1) reversing a decree (13th June 1893) of the Subordinate Judge of Agra.

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* *Present:*—Lords HOBHOUSE, DAVEY, and ROBERTSON, and SIR RICHARD COUCH.

(1) (1895) *Indarjit* v. *Lalchand*, I. L. R., 18 All., 168.