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dismiss this appeal; but in dismissing it we make this addition that we reserve to the plaintiff liberty to bring a fresh suit for the partition of this property bringing in the whole of the family property. The appeal is dismissed with costs.

J. V W.

Appeal dismissed.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Porter.

1886 *August* 11.

J. C. MACGREGOR. RECEIVER OF THE ESTATE OF THE LATE BEJOY KESHUB ROY (DECREE-HOLDER) *v.* TARINI CHURN SIRCAR (JUDGMENT-DEBTOR.)*

Execution of decree—Omission to describe the property to be attached—Act XIV of 1882, *ss.* 237, 245—*Limitation.*

A decree-holder, on the 8th July 1885, applied for execution of a decree dated the 10th July 1873, omitting to set out specifically in such application a description of the immoveable property sought to be attached. On the 24th July he applied for and obtained one month's time to file a list of these properties; and on the 7th August, after filing the list, applied for the attachment and sale of such properties. The judgment-debtor contended execution was barred by limitation. *Held*, that the omission to file on the 8th July the list describing specifically the properties sought to be attached, was a mere defect of description which could be remedied under s. 245 of the Code of Civil Procedure by allowing an amendment to be made; and further that the two applications of the 8th and 24th July should be considered as one entire application dating from the date of the 8th July. *Syud Mahomed* v. *Syud Abedoollah* (1) followed.

ON the 10th July 1873 the plaintiff obtained against the defendant a decree for rent.

On the 8th July 1885 the plaintiff applied for execution both against the person and property of the judgment-debtor generally, annexing no list of the specific properties which he sought to attach.

On the 24th July 1885 he applied for three months' time in which to file a list of the specific immovable properties he sought to attach; on this application an order was made granting

* Appeal from Order No. 196 of 1886, against the order of R. F. Rampini, Esq., Judge of Hooghly, dated the 26th of March 1886, reversing the order of Baboo Abinash Chunder Mitter, Second Subordinate Judge of that district, dated the 26th of November 1885.

(1) 12 C. L. R., 279.

him one month's time. On the 7th August 1885, the decree-holder filed a list of the immovable properties, and asked for their attachment and sale.

The judgment-debtor objected to the application, on the ground that it was barred, more than twelve years having elapsed since the date of the original decree.

The Subordinate Judge held that the application for further time to file the list of the properties attached was not a new application, but was a continuation and part of the application of the 8th July; and distinguishing the case of *Sreenath Gooho* v. *Yusoof Khan* (1) allowed execution to issue.

The judgment-debtor appealed to the District Judge, who held that the case was very similar to that of *Sreenath Gooho* v. *Yusoof Khan* (1), which laid down the principle that no supplementary list of property can be allowed to be put in after the expiry of the period of limitation; and distinguishing the cases of *Hurry Charan Bose* v. *Subaydar Sheikh* (2) and *Syud Mahomed* v. *Syud Abedoollah* (3); inasmuch as in the first case there had been previous applications for attachment made, and in the second the defect in the decree-holder's application was one of form,—held that the Subordinate Judge was wrong in allowing execution to issue.

The decree-holder appealed to the High Court.

Baboo *Nilmadub Bose*, for the appellant, contended that the petition for leave to file a list of properties after time was not a separate application for execution, but was an application in amendment and continuation of the application of the 8th July.

Baboo *Kamal Krishna Bhuttacharjea* and Baboo *Srish Chunder Chowdhry*, for the respondent.

PETHERAM, C.J.—I think that this appeal must be allowed.

The question here is from what period a particular application is to date, with reference to the period of limitation.

The application in this case was an application to execute a decree which was dated on the 10th July 1873, and on the 8th July 1885 an application was made to execute that decree. The decree-

(1) I. L. R., 7 Calc., 556. (2) I. L. R., 12 Calc., 161.
(3) 12 C. L. R., 279.

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holder applied to execute the decree by arresting the judgment-debtor and by the attachment and sale of his property.

It is perfectly clear that this is an application not to attach and sell any specific portion of the judgment-debtor's property, but to attach and sell the whole wherever it is; and the question is, whether this is an application to attach and sell his property within the meaning of ss. 235 and 237 of the Code of Civil Procedure.

Section 230, which is the first section that applies to this matter, provides that when the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree, or if the decree has been sent to another Court, then to such other Court; and s. 235 says that the application shall be in writing and shall contain certain particulars. And then s. 237 provides that, whenever an application is made for the attachment of any immoveable property of the judgment-debtor, it shall contain certain particulars; and finally it is provided by s. 245 that, where the requirements of ss. 235 to 238 have not been complied with, the Court may allow the applicant, within a time to be fixed by the Court, to amend the mistake or omission.

The first question then is, whether this was an application to attach any immovable property of the judgment-debtor, because it appears from s. 237 that, in that case, it is necessary to give some indication of what immovable property of the judgment-debtor it is required to attach; and, therefore, if the application were to attach half the property of the judgment-debtor, I should think myself that that would not be an application at all within the meaning of the section, because it would not show what portion of the property it was intended to attach. But, where the application is to attach and sell the whole of the judgment-debtor's property, it is clear there could be no mistake as to what portion of the property it was intended to attach, because what the creditor says is, I want to take the whole.

The section says that, in addition to stating what property he wants to attach, the applicant shall describe it, and that is essential for the purpose of showing what property it is intended to attach; but sufficiency of description cannot be essential, where it is accompanied by a declaration that the creditor intends

to take the whole. If, however, s. 237 does apply, it is a mere defect of description, and that defect can be remedied under s. 245; and all the decisions under the cognate sections of the Code show that, where an application is made on a particular date, and it is afterwards amended under another section, the date from which limitation is to run in respect of that application is the original date of its presentation; and that shows that, where the application is afterwards amended by giving the particulars required by s. 237, on an application made at a later period, the two applications become an entire application, dating from the date the first application was presented. Therefore, in my opinion, the date which must be taken as the date from which limitation is to count is the 8th July 1885, and therefore, I think, this petition was in time.

The only other matters which it is necessary to notice are the two or three cases on the subject which were referred to in the course of the argument. The case of *Syud Mahomed* v. *Syud Abedoollah* (1) decided by Mr. Justice McDonell and Mr. Justice Field is, in my opinion, a case clearly in point. It decides the same point that we decide here; and if we had any doubt about this case, it would be our duty to follow that decision. So far as the cases are concerned we decide in accordance with them, unless it can be said that a note of Mr. Justice Mitter in the case of *Hurry Charan Bose* v. *Subaydar Sheikh* (2) looks the other way; and at first sight it may be said to do so. He says: "When the case goes back the Munsiff will take care that execution does not issue against any property not mentioned in the petition of the previous execution case No. 30 of 1884."

Now that note seems to imply that, in that particular application, some property was mentioned as being the property of the judgment-debtor, but in this case no specific property is mentioned in the application, and the property which is mentioned in it is all the property which the judgment-debtor has, and therefore the case does not come within the view expressed by Mr. Justice Mitter in that note. In that case, as I said before, the particulars of the property would appear to

(1) 12 C. L. R., 279. (2) I. L. R., 12 Calc., 161.

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have been given, but here no particulars are given which would go beyond the description "the whole of the debtors' property."

For these reasons I think that the judgment of the Subordinate Judge was right, and that of the District Judge was wrong. His judgment will, therefore, be reversed, and that of the Subordinate Judge restored with costs, both in this Court and in the Court below.

T. A. P.

Appeal allowed.

CRIMINAL MOTION.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

1886

November 23.

IN THE MATTER OF LUCHMINARAIN, PETITIONER.*

Criminal Procedure Code (Act X of 1882), ss. 234, 537—Charge of three offences of the same kind—Irregularity occasioning a failure of justice.

An accused was charged with criminal breach of trust as a public servant in respect of three separate sums of money deposited in the Savings Bank under three separate accounts.

The third of these charges related to the misappropriation of Rs. 195 composed of two separate sums of Rs. 150 and Rs. 45, alleged to have been misappropriated on the 16th and 25th November respectively. These sums the accused in his statement at the trial stated he had paid over on those dates to the depositor, and produced an account book showing entries of such payments on those dates. This statement was proved to be untrue, and the accused was convicted.

On an application to quash the conviction on the ground that the trial had been held in contravention of s. 234 of the Code of Criminal Procedure, *Held*, that the entries in the account books did not clearly show that the misappropriation of the sum of Rs. 195 took place on two dates, or consisted of two transactions, the entries having been made for the purpose of concealing the criminal breach of trust; and that under the circumstances the criminal breach of trust with regard to the Rs. 195 was really one offence and could be included in one charge.

Semble (*Per* PETHERAM, C.J.)—That if a man were tried for four specific offences of the same kind at one trial, such a procedure would not be merely

* Criminal Motion No. 450 of 1886, against the order passed by H. W. Gordon, Esq., Sessions Judge of Sarun, dated the 26th of July 1886, modifying the order passed by A. L. Clay, Esq., Officiating District Magistrate of Sarun, dated the 10th of June 1886.