

## APPELLATE CIVIL.

1908

March 16.

Before Mr. Justice Aikman and M. Justice Karamat Husein.  
 SHER SINGH (JUDGMENT-DEBTOR) v. SRI RAM AND ANOTHER (DECREE-  
 HOLDERS).\*

*Civil Procedure Code, section 266—Execution of decree—Attachment—Right to attach profits not yet due.*

Held that a mere right to receive profits, the profits in question not having yet accrued due is not susceptible of attachment in execution of a decree. *Haridas Acharjia Chowdhry v. Baroda Kishore Acharjia Chowdhry* (1), *Uday Kumari Ghatwalin v. Hari Ram Shaha* (2), *Syud Puffuzzool Hossein Khan v. Rughoonath Pershad* (3), *Jones v. Thompson* (4) and *Wabb v. Stenton* (5) referred to.

IN this case Sri Ram and Ganeshi Lal, the holders of a decree against one Sher Singh, applied for the attachment of the profits which were then due to the judgment-debtor from the lambardar of the village on account of the *khariif* harvest of 1313 fasli, and also of the profits which would become due to him, but were not due at the time of the attachment, on account of the *rabi* harvest of the same year. The judgment-debtor preferred objections, but these were overruled by the Court of first instance (Subordinate Judge of Moradabad) and this decision was upheld by the District Judge. The judgment-debtor appealed to the High Court urging that the decree-holders were not entitled to attach future profits which had not at the time of the application for attachment accrued due.

Dr. *Tej Bahadur Sapru*, for the appellant.

Munshi *Gokul Prasad* (for whom Babu *Sarot Chandra Chaudhri*), for the respondents.

AIKMAN and KARAMAT HUSEIN, JJ.—The respondents decree-holders, in execution of a money decree which they had against the appellant, applied for the attachment of the profits which were then due to him from the lambardar of the village on account of the *khariif* harvest of 1313 Fasli, and also for the attachment of the profits which would become due to him, but

\* Second Appeal No. 1213 of 1906, from a decree of D. R. Lyall, District Judge of Moradabad, dated the 29th of August 1906, confirming a decree of Maula Bakhsh, Subordinate Judge of Moradabad, dated the 9th of June 1906.

(1) (1899) I. L. R., 27 Cal., 38.

(3) (1871) 14 Moo., I. A., 40.

(2) (1901) I. L. R., 28 Cal., 483.

(4) (1858) 27 L. J., Q. B. D., 234.

(5) (1888) 11 Q. B. D., 518.

were not due at the time of the attachment on account of the *rabi* harvest of the same year. The judgment-debtor objected. His objections were overruled by the Court of first instance, whose decision was affirmed by the learned District Judge. The judgment-debtor comes here in second appeal. The learned advocate for the appellant confines his appeal to the question as to the right to attach the *rabi* profits. In support of his appeal he relies on the cases—*Hari Das Acharjia Chowdhry v. Baroda Kishore* (1) and *Udoy Kumari Ghatwabin v. Hari Ram Shaha* (2). These cases are not exactly on all fours with the present, but there are observations in the judgments which are in favour of the appellant. Reliance is also placed on the decision of the Privy Council in *Syud Tuffuzool Hossein Khan v. Rughoonath Pershad* (3). We have referred to various English authorities and these too support the appellant's contention. In the case *Jones v. Thompson* (4) it was held that the mere fact that it is most probable that there will be a debt is not sufficient. There must be an actual debt. On this principle it appears—see the case *Webb v. Stenton* (5)—that the English Judges refuse to make orders attaching rent before it becomes due. In the case of the *rabi* profits here it is quite clear that there was no existing debt, there was a mere possibility that there might be money due to the judgment-debtor for profits when the accounts for the *rabi* harvest were made up. In our opinion this possible right of the judgment-debtor was not liable to attachment having regard to the provisions of section 266 of the Code of Civil Procedure. Reference was made in the course of the argument to attachment of salaries not yet due, but for these special provision is made in the section. We allow the appeal so far as it relates to the attachment of the profits of the *rabi* harvest of 1313 Fasi, and we set aside the attachment of the right to recover those profits. In other respects the appeal fails. Having regard to the result, we direct that the parties bear their own costs here and in the Courts below.

*Decree modified.*

(1) (1899) I. L. R., 27 Cal., 38.

(3) (1871) 14 Moo., I. A., 40.

(2) (1901) I. L. R., 28 Cal., 433.

(4) (1858) 27 L. J., Q. B. D., 234.

(5) (1883) 11 Q. B. D., 518.