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Judge was varied by the High Court only as regards the amount of the dower. An appeal was preferred and the judgement of their Lordships of the Privy Council was delivered by Lord Hannen, who in the course of his judgement sets out the defence raised by the defendants, namely, amongst others, that, as the marriage took place at Lucknow, the contract of dower was regulated by the usages and customs of Oudh, and that by those usages and customs the agreed amount of dower, if excessive, might be reduced by the court to an amount suitable to the circumstances and position of the husband and wife. This contention the court of first instance repelled, and, their Lordships say, rightly. At page 698 of the report in reference to this matter their Lordships say, that they "agree with the Subordinate Judge that the usages and customs of Oudh as to dower were not applicable to the marriage in question." Fortified by this decision of their Lordships of the Privy Council we are unable to uphold the decision of the court below. We may further point out that the Act XVIII of 1876 is stated in the preamble to be "an Act to declare and amend the laws to be administered in Oudh." This indicates that it is only the courts administering laws in Oudh which could put in force the provisions of the Act.

We therefore allow the appeal. We modify the decree of the court below, and allow the plaintiff, in lieu of the sum of Rs. 10,000 awarded to her, the full amount claimed by her, namely, Rs. 25,000. The plaintiff will have her costs in both courts.

Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.

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March 4.

LALTA PRASAD AND ANOTHER (PLAINTIFFS), *v.* ZAHUR-UD-DIN AND ANOTHER (DEFENDANTS).*

Contribution—Attachment—Purchase of part of attached property by a third party who satisfies the whole claim—No right of contribution against the remainder acquired by the purchaser.

An attaching creditor does not obtain by his attachment any charge or lien upon the attached property. Where therefore a third party purchased a portion of certain property under attachment and satisfied the whole of the creditor's claim, it was *held* that the purchaser acquired no right of contribution as against the

* Second Appeal No. 112 of 1909, from a decree of W. H. Webb, District Judge of Bareilly, dated the 9th of November, 1908, modifying a decree of Girraj Kishore Dat, Subordinate Judge of Bareilly, dated the 12th December, 1906.

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remainder of the attached property. *Moti Lal* v. *Karrabuldin* (1), *Peacock* v. *Madan Gopal* (2), and *Miller* v. *Lukhimani Debi* (3) referred to.

THE facts of this case were as follows:—

One Ram Mohan Lal owned shares in five villages. He was indebted to one Nand Kishore, who brought a suit to realize the amount of the debt. On the 8th of May 1889, Nand Kishore obtained an order for attachment of the property of Ram Mohan Lal before judgement. On the 25th of May, 1889, he obtained a decree. This was a simple money decree. On the 25th of August, 1905, the interest of Ram Mohan Lal in the five villages was advertized for sale. Prior to this, namely, on the 9th of October 1899, the plaintiffs appellants purchased the interest of Ram Mohan Lal in one of the villages, and, to save that property from sale under the attachment, they, on the 21st of August, 1905, paid the amount of Nand Kishore's decree. They then sued to obtain contribution from transferees from Ram Mohan Lal of his interest in the other villages.

The Subordinate Judge decreed the suit, but his decree was reversed by the District Judge as against Zahur-ud-din and Fakkar-ud-din, defendants 1 and 2, on the ground that the property did not belong to Ram Mohan Lal, Zahur-ud-din, defendant 1, being made liable for Rs. 164-4-0, and as against defendants 3, 4 and 5, the suit was dismissed for misjoinder of parties and causes of action.

The plaintiffs appealed.

Zahur-ud-din filed objections under order XLI, rule 22, of the Code of Civil Procedure.

Dr. *Satish Chandra Banerji*, for the appellants:—The agreement for sale executed in favour of Ram Mohan Lal, by the reversioners to the estate of Dube Gopal Sewak passed nothing to him. A reversioner has not such an estate as can be transferred. He referred to section 6, clause (*a*) of the Transfer of Property Act and to *Nund Kishore Lal* v. *Kanee Ram Tewary*, (4) and *Sham Sundar Lal* v. *Achhan Kunwar* (5). Hence, on December 12th, 1882, Ram Mohan Lal himself could convey no interest to Lalji Mal as he had nothing to

(1) (1897) I. L. R., 25 Calc., 179.
(2) (1902) I. L. R., 29 Calc., 428.
(3) (1901) I. L. R., 28 Calc., 419.
(4) (1902) I. L. R., 29 Calc., 955.
(5) (1898) L. R., 25 I. A., 183; I. L. R., 21 All., 71.

transfer. In 1885 Ram Mohan Lal's interest was perfected by means of an actual transfer from the reversioners; but this after-acquired interest could not feed the estoppel in favour of Lalji Mal inasmuch as there was no interest created in the property. There was only a contract for sale, and under section 54, Transfer of Property Act, such a contract creates no interest in the property. In 1891, when the actual transfer was made by Ram Mohan Lal to Lalji Mal, the property had already been placed under attachment, and under section 276, Code of Civil Procedure, 1882, the transfer was void as against the attaching creditor. The property thus remained all along Ram Mohan Lal's and the Judge below was wrong in supposing that the property had become Lalji Mal's. The case of *Annu Mal* v. *The Collector of Bareilly* (1), on which the court below had relied, had no bearing upon the present case, for there was no question of countervailing equities in this case. The plaintiffs purchased their share of Ram Mohan Lal's property subject to attachment, just as the defendants had done. The plaintiffs paid off the amount of the entire decree, and saved the attached properties, the shares of the defendants being also included, from impending sale. Consequently for the benefit which they conferred upon the others in excess of their own *quota* of liability the plaintiffs were entitled to claim contribution from those on whom the benefit had been conferred.

Maulvi *Shafi-uz-zaman* (for Zahur-ud-din and Fakhr-ud-din, respondents), contended that Ram Mohan Lal had no interest in the property at the date when these respondents purchased it, and they were not bound to recoup the plaintiffs for any loss they might have incurred.

Babu *Lalit Mohan Banerji*, for *Jugal Kishore* respondent:—

No claim for contribution arises in this case. A claim for contribution can be maintained only under two circumstances, viz., when in order to save his own property it is absolutely necessary to save the property of others and thus a benefit is conferred upon those others, and secondly, when the properties are subject to a common charge. The properties were simply under attachment, and that creates no charge. Again, all the

(1) (1906) I. L. R., 28 All., 315.

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properties were not liable for the entire amount of the decree. The decree-holder might have sold and realized the whole amount of his decree out of one of the properties and it would not have been necessary for him to sell other properties. He was only concerned with getting his money and nothing more. The payment of the entire amount due under the decree by the plaintiffs was premature and was simply gratuitous, they cannot claim contribution if they have been too generous.

Dr. *Satish Chandra Banerji* in reply contended that the attachment did create a charge on the attached property, and cited *Gurusami* v. *Venkatsami* (1).

[The argument was at this stage adjourned.]

Babu *Sarat Chandra Chaudhri* (for Dr. *Satish Chandra Banerji*), at a subsequent hearing relied on Pomeroy's *Equity Jurisprudence*, Vol. I, section 407, 411, and contended that inasmuch as there was a common burden, namely, the attachment, upon the properties and the plaintiffs had relieved the properties of that burden, they were entitled to contribution. The right would arise where a common liability rested upon several persons. Here the parties were in the position of joint debtors subject to the same pecuniary obligation.

STANLEY, C. J., and GRIFFIN, J.:—This appeal is connected with Second Appeals Nos. 113 and 114 of 1909. The question involved in them is one of contribution and the claim arises under the following circumstances. One Ram Mohan Lal owned shares in five villages. He was indebted to one Nand Kishore, who brought a suit to realize the amount of the debt. On the 8th of May, 1889, Nand Kishore obtained an order for attachment of the property of Ram Mohan Lal before judgement. On the 25th of May, 1889, he obtained a decree. This was a simple money decree. On the 25th of August, 1905, the interest of Ram Mohan Lal in the five villages was advertised for sale. Prior to this, namely, on the 9th of October, 1898, the plaintiffs appellants purchased the interest of Ram Mohan Lal in one of the villages, and to save that property from sale under the attachment, they, on the 21st of August, 1905, paid the amount of Nand Kishore's decree. They then instituted the suit out of which these appeals

(1) (1890) I. L. R., 14 Mad., 277, 228.

have arisen to obtain contribution from transferees from Ram Mohan Lal of his interest in the other villages.

Mr. *Lalit Mohan Banerji*, on behalf of the respondents in Second Appeal No. 114 of 1909, raised a point which was not considered in the courts below. His contention was that the attachment of the villages in question did not create any lien or charge upon them, and that consequently as between the plaintiffs appellants and the respondents there was no common burden which the plaintiffs appellants discharged so as to give them a right to call upon the defendants respondents for contribution.

We think that this contention is well founded. The right to contribution arises when two or more persons are liable to discharge a common burden. The principle is that they should discharge it rateably in accordance with the equitable principle that 'equality is equity' and if one discharges the entire burden, he has a right of contribution against the others, or, in other works, as the doctrine has been stated, "where a common liability rests on several persons in favour of a single claimant, equity will enforce such liability upon all the class in accordance with the maxim 'equality is equity.'" In this case we fail to discover that there was any common burden. In the case of *Moti Lal* v. *Karrabuldin* (1) their Lordships of the Privy Council held that attachment only prevents alienation and does not confer a title (see page 185). This ruling of their Lordships was followed in the case of *Peacock* v. *Madan Gopal* (2). It was there held by a Full Bench, overruling the earlier decision in *Miller* v. *Lukhimani Debi* (3), that an attaching creditor does not obtain by his attachment any charge or lien upon the attached property. The decree-holder then in the case before us did not by the attachment acquire any lien or charge upon the property of his judgement-debtor. That property when sold by the latter became vested in the transferees, subject only to the right which the decree-holder had of executing his decree and selling the property for the realization of his debt. No steps, however, were taken for the purpose of carrying out a sale in execution of the decree beyond the fact that the property was advertised for

(1) (1897) I. L. R., 25 Calc., 179. (2) (1902) I. L. R., 29 Calc., 428.
(3) (1901) I. L. R., 28 Calc, 419.

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sale. Before a sale took place the plaintiffs appellants voluntarily paid the amount of the decree and relieved the property from the attachment. The defendants respondents were never liable to satisfy that decree, which, as we have said, was a simple money decree. The sole liability to discharge the decree rested upon the judgement-debtor. The fact that the plaintiffs appellants in order to protect from sale the property purchased by them paid the amount of the decree and so relieved the entire property from the attachment does not give them a right of contribution. Under such circumstances there being no common burden—no common liability—we are of opinion that a right of contribution did not arise, and upon this ground the appeal must fail.

An objection was filed under order XLI, rule 22. In the lower appellate court a decree was passed for Rs. 164 with proportionate costs *et cetera* against Zahur-ud-din and Fakhr-ud-din. The contention is that no decree ought to have been passed against these parties, and, in view of what we have said above, this objection is well founded.

We accordingly dismiss the appeal. We allow the objection, and, setting aside the decree of the lower appellate court, dismiss the plaintiff's suit with costs in all courts.

Appeal dismissed.

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March 8.

Before Mr. Justice Richards and Mr. Justice Tudball.

KUNJI LAL (PLAINTIFF), *v.* DURGA PRASAD AND OTHERS (DEFENDANTS).*

Civil Procedure Code (1882), *sections* 13, 525 *and* 526—*Res judicata—Order refusing to file an award on the ground of misconduct of arbitrators—Subsequent suit to enforce the award.*

Held that the refusal of a court to file a private award on the ground of misconduct of the arbitrators will not operate as *res judicata* in respect of a subsequent suit brought to enforce the award. *Bhola* v. *Gobind Dayal*, (1) *Katik Ram* v. *Babu Lal* (2) and *Basant Lal* v. *Kunji Lal* (3) followed. *Ghulam Khan* v. *Muhammad Hassan* (4) referred to.

THIS was a suit brought to enforce an award. The defence was that there had been an application under section 525 of the

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* First Appeal No. 270 of 1908 from a decree of Chhajju Mal, Subordinate Judge of Mainpuri, dated the 17th of August, 1908.

(1) (1814) I. L. R., 6 All., 186.
(2) Weekly Notes, 1903, p. 234.
(3) (1905) I. L. R., 28 All., 21.
(4) (1901) I. L. R., 29 Calc., 167.