

this ground, we would have to be satisfied that injustice had been done to the accused by the exclusion of this evidence.

If it had appeared that there was a material difference between the statements made by the witnesses to the Sub-Inspector, and their statements made in Court, it would have been difficult to say that the accused had not been prejudiced by the Judge's decision on this question.

The Judge says that he has read the statements, and that there is practically no difference between what the persons examined stated and what the witnesses have deposed before both Courts. We see no reason to doubt the correctness of the Judge's statement, and if the legal advisers of the accused had seen any real ground for disputing it, they would have endeavoured to obtain the production of these statements, so that they might have been considered at the hearing of the appeal.

Taking all the circumstances into consideration, we do not think that the omission of the Judge to admit this evidence would justify us in ordering a new trial. On the mere speculation that these statements would disagree, and in face of the Judge's statement that they do not materially disagree, we could not order a new trial.

[Their Lordships then proceeded to determine the case on its merits, and ended in upholding the conviction and reducing some of the sentences.]

H. T. H.

Conviction upheld.

APPELLATE CIVIL.

Before Mr. Justice Pigot and Mr. Justice Beverley.

KRISTO RAMANI DASSEE (APPELLANT) v. KEDAR NATH CHAKRAVARTI AND ANOTHER (RESPONDENTS).*

Set-off—Civil Procedure Code (Act XIV of 1882), ss. 233, 243, 246—Execution of assigned decree—Set-off against assigned decree partly executed.

A. B. had obtained a decree against *K.* and *T.* After the decree had been partially satisfied, *A. B.* assigned it to *D.* Prior to the date of the assignment, *K.* and *T.* had instituted a suit against *A. B.* and *D.*, and ultimately obtained a decree against both of them.

* Appeal from Order No. 381 against the order of Baboo Gopal Chunder Bose, Subordinate Judge of Bhagalpore, dated the 25th August 1888.

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Held, that *K.* and *T.* were entitled to set-off their decree against the unexecuted portion of the decree which had been assigned to *D.*

THE appellant, the respondents, and one Anisul Barkat appear to have been co-sharers in a certain putni-tenure. On the 13th June 1883, Anisul Barkat obtained a decree for rent for about Rs. 9,000 against the respondents Kedar Nath Chakravarti and Troylucko Nath Chakravarti. After the decree had been partially satisfied, on the 29th June 1886, Anisul Barkat assigned it to the appellant Kristo Ramani Dassee, a sum of Rs. 5,118-12-3 being then due under it. Meanwhile, on the 3rd February 1885, that is, prior to the date of the assignment, the respondents Kedar Nath and Troylucko Nath instituted a suit against both Anisul Barkat and Kristo Ramani Dassee, the assignor and assignee, for possession and mesne profits in respect of another share in the same putni, and obtained a decree against both of them on the 23rd March 1887.

Under this decree, on the 16th July 1888, mesne profits, as against the assignor Anisul Barkat, were assessed at Rs. 5,187-13-8. While the respondents' suit was pending, Kristo Ramani attempted to execute the decree which had been assigned to her, but was resisted by them. Ultimately she established her right to execute the decree, and also obtained a decree for costs in those proceedings amounting to Rs. 60-3-3. Kristo Ramani thus held decrees against the respondents, Kedar Nath and Troylucko Nath, for an aggregate sum of Rs. 5,178-15-6, in execution of which she attached the same share in the putni, in respect of which they had obtained a decree, and the property was advertized for sale on the 16th July 1888. On that date, as already stated, the respondents had obtained their decree for mesne profits, amounting to Rs. 5,187-13-8, as against Anisul Barkat. As this decree had been obtained in a different Court, the respondents applied for a postponement of the sale in order to enable them to have their decree transferred to the Court which was executing Kristo Ramani's decree. That was done, and the respondents having pleaded their decree by way of set-off, the Lower Court allowed the plea.

From this order Kristo Ramani appealed to the High Court.

Mr. J. T. Woodroffe, Baboo Troylucko Nath Mitter, and Baboo Saroda Charan Mitter for the appellant.

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Baboo Navadip Chunder Roy for the respondents.

The judgment of the Court (PIGOT and BEVERLEY, JJ., after setting out the facts, proceeded as follows):—

The question raised is shortly this: Whether or not the decree obtained by the respondents against the assignor in a suit which was pending at the date of the assignment, and which had ripened into a decree before the assigned decree was fully executed, can be set-off against the unexecuted portion of the assigned decree. The question for decision depends upon the construction of three sections of the Civil Procedure Code: ss. 246, 243 and 233. By s. 246 a set-off of one decree as against another is allowed. By explanation 2 of that section, it is allowed "where either party is an assignee of one of the decrees, and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself." It was for some time a subject of controversy in this Court, whether in the case of decrees, both of which were in existence but not yet set-off one against the other, upon the assignment of one of them, the right to set-off still subsisted as against the assignee; and after some controversy that question was finally decided in favour of the right to set-off. The case now before us opens a further question, inasmuch as at the date of the assignment of the decree now held by the appellant, the decree held by the respondents had not been made, although their suit had been filed. Section 243 provides that, "if a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution of the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided. In s. 233, it is enacted that "every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder." When the appellant took an assignment of this decree, she must have known perfectly well (for it is admitted that she had full notice) of the existence of the suit against herself and her assignor, her co-sharer in the putni.

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A right to set-off the amount of one decree against another was repeatedly referred to, as an equity affecting the latter decree, in the decisions of this Court prior to the Code of 1877, which for the first time enacted section 233. In whatever mode that equitable right could be made to operate as against the holder of the decree, we think it must be allowed to operate against his assignee with notice of the existence of the pending suit. It is clear that, apart from the assignment, the right of set-off as to the unexecuted part of the first decree would exist in the present case under s. 246 against the assignor; and for the reason just stated it must equally exist against the assignee.

We therefore dismiss both appeals with costs. We think that we ought not to be illiberal in assessing the costs in this case, which is an exceedingly oppressive attempt on the part of the appellant; and for that reason, and the importance of the matter, we allow five gold mohurs as the hearing fee in each appeal.

C. D. C.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice Trevelyan.

KHATU BIBI (DEFENDANT No. 2) v. MADHURAM BARSICK
 (PLAINTIFF).^o

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Transfer of Property Act (IV of 1882), s. 54—Transfer of immoveable property by unregistered deed—Deed of which registration is optional—Suit by purchaser for possession when vendor is out of possession.

Section 54 of the Transfer of Property Act is not exhaustive or imperative in requiring that the transfer of immoveable property of less than Rs. 100 should be made only by one of the modes there stated, so as to confer a valid title.

Where the plaintiff bought from the heirs of *M.*, who were out of possession, their right title and interest in certain immoveable property, and such property was conveyed to the plaintiff by an unregistered deed, registration of the deed (the property being of value of less than Rs. 100) not being compulsory: *Held*, in a suit to recover the property from persons in possession without title, that the sale conferred a valid title on

^o Appeal from Appellate Decree No. 958 of 1888, against the decree of W. H. M. Gun, Esq., Judge of Noakhali, dated the 13th of February 1888, modifying the decree of Baboo Srigopal Chatterjee, Munsiff of Sundip, dated the 27th of June 1887.