

## PRIVY COUNCIL.

\* P. C.  
1916  
March, 14.

DEBI BAKHSI SINGH (JUDGEMENT-DEBTOR) v. SHADI  
LAL (DECREE-HOLDER).

[On appeal from the Court of the Judicial Commissioner of Oudh, at Lucknow.]  
*Oudh Land Revenue Act (XVII of 1876), sections 173, 174—Contract entered into by disqualified proprietor creating charge on his property whilst under superintendence of Court of Wards—Liability of property in execution of decrees obtained in respect of such contract after property has been released—N.-W. P. Land Revenue Act (XIX of 1873), section 205B, as amended by United Provinces Court of Wards Act (III of 1899.)*

Section 174 of the Oudh Land Revenue Act (XVII of 1876) enacts with respect of persons whose property is under the superintendence of the Court of Wards, that, "no such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence."

*Held* that the phrase, "while his property is under such superintendence" was annexed to and elucidative of the verbal expression "contract entered into by such person." Where therefore, a contract has been made during such period of time, the effect of the section is to protect the property against attachment in execution of the decree, even after the property has been released from superintendence of the Court of Wards.

The dictum to the contrary in *Rameshar Bakhsh Singh v. Dhanpal Das* (1) overruled.

APPEAL No. 90 of 1914, from a judgement and decree (12th of November, 1913) of the Judicial Commissioner of Oudh which affirmed a finding and order (4th of June, 1913) of the Court of the Subordinate Judge, Bahraich.

The appellant was the Taluqdar of Mallanpur, the successor to one Raja Muneshwar Bakhsh Singh, whose estate was under the management of the Court of Wards up to July, 1898, when it was released. Whilst the estate was in charge of the Court of Wards Raja Muneshwar Bakhsh Singh borrowed certain sums of money from the respondents; and in the course of litigation which ensued after the estate had been released a decree was obtained by the respondents against the appellant, the amount of which was eventually settled by order of the Court of the Judicial Commissioner to be Rs. 12,631-5-9. In execution of that decree a village, part of the appellant's estate, was attached with a view to sale.

*Present* :—Lord SHAW, Sir JOHN EDGE and Sir LAWRENCE JENKINS.

(1 (1910) 14 Oudh Cases, 6.

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The appellant objected to the attachment on the ground that the village was property under the superintendence of the Court of Wards at the time the money was borrowed, and the borrowing was by a person whose property was under such superintendence at the time of the contract to borrow and it could not therefore be attached in execution of the decree by reason of section 174 of the Court of Wards Act (XVII of 1876).

The Subordinate Judge held that the estate was only protected from attachment while under the Court of Wards' superintendence, which had ceased long before execution proceedings were commenced, and he accordingly held that the village was liable to attachment in execution of the decree.

On appeal the Court of the Judicial Commissioner (Mr. L. STUART, 1st Additional Commissioner, and Mr. KANHAIYA LAL, 2nd Additional Judicial Commissioner) affirmed the decision of the Subordinate Judge. They said :

"Mr. Sen, who has argued the appeal on behalf of the appellant, has referred us to the ruling in *Ram Parshad v. Muna Kuar* (1) and to the ruling in *Himanchal Singh v. Jhamman Lal* (2) and *Jhamman Lal v. Himanchal Singh* (3). The last of these rulings was passed on the 17th of August, 1901. He argues that in a case in which a person's property has been taken under the management of the Court of Wards, a decree obtained in respect of a debt contracted by such a person while his property is under the management of the Court of Wards, cannot be executed against the property of such person after that property has been released in so far as the provisions of Act XVII of 1876 and Act XIX of 1873 affect the case. Had these rulings stood alone, Mr. Sen's arguments might have prevailed. We find, however, that a Bench of this Court decided on the 24th of November, 1910, in *Rameshar Balkish Singh v. Dhanpal Das* (4) that property so released is liable to attachment in execution of a decree obtained on a debt contracted while the property was under the management of the Court of Wards. On page 8 occur the words :—"It is quite clear that under the old Act a creditor could obtain a decree upon a bond given by a ward while his property was under the superintendence, and execute that decree against the property of the ward after the property was released from superintendence." This is a ruling of a Bench of this Court. It overrules the ruling in *Ram Parshad v. Muna Kuar* (1), which was a ruling of a single Judge of this Court, and we consider it to be binding upon us. As this is a case falling under the old Act, we decide this point against the appellant."

(1) (1900) 4 Oudh Cases, 28.

(3) (1901) I. L. R., 24 All., 186.

(2) (1900) I. L. R., 22 All., 364.

(4) (1900) Oudh Cases, 28.

On this appeal which was heard *ex parte*.

*De Gruyther, K. C.*, and *S. A. Kyffin* for the appellant contended that the village in question was not liable to attachment; and the courts below were wrong in holding that it could be so taken in execution of the decree. Sections 173 and 174 of the Oudh Land Revenue Act (XVII of 1876) were referred to; the latter section expressly prohibited any such liability. Where a charge has been created on property under the superintendence of the Court of Wards in respect of a contract entered into by a person whose property is under such superintendence, and a decree has been made so as to create a legal charge in it the property cannot be attached in execution of the decree, even after the property has been released from such superintendence; and section 174 bears no other construction. That has been so decided. Under the N.-W. P. Land Revenue Act, section 205 is, as amended by N.-W. P. Act VIII of 1879, section 23, in terms identical with section 174 of Act XVII of 1876: reference was made to *Himanchal Singh v. Jhamman Lal* (1); *Jhamman Lal v. Himanchal Singh* (2); and *Ram Parshad v. Muna Kwar* (3). The case of *Rameshar Bakhsh Singh v. Dhanpal Das* (4), by the decision in which the Judicial Commissioner's Court considered itself bound, was, it was submitted, wrongly decided, and was merely an *obiter dictum*, as the question did not in that case arise for decision. Reference was made to section 34 of Act III of 1899 (United Provinces Court of Wards Act); and the case of *Muneshar Bakhsh Singh v. Shadi Lal* (5). The provisions in all these Acts were made for the protection of the property of the disqualified proprietor and the decisions appealed from were opposed to that principle and should be reversed.

1916, March 14th.—The judgement of their Lordships was delivered by Lord SHAW:—

By section 162 of the Oudh Land Revenue Act, XVII of 1876, certain persons are declared to be disqualified from managing their estates. Among the enumeration of those persons are the following: Under sub-section (g), "Persons

(1) (1900) I. L. R., 22 All., 364. (3) (1900) 4 Oudh Cases, 23.

(2) (1901) I. L. R., 24 All., 136. (4) (1910) 14 Oudh Cases 6, (7).

(5) (1909) I. L. R., 31 All., 386; I. R., 36 I. A., 96.

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declared by the Chief Commissioner on their own application to be disqualified from managing their estates." The Taluqdar of Mallanpur was one of those persons. On his application his estates were assumed by the Court of Wards and they remained under the management of that Court from the year 1886 until the year 1893.

During that period the Raja borrowed certain sums of money, and on the 12th of August, 1904, his creditors sued and obtained a personal decree against him in the Court of first instance. There were certain judicial proceedings which occurred subsequent to the decree; and it may be of interest to note that, the debt incurred having been originally a sum of Rs. 4,000, execution is now sought to be obtained against the property put under the management of the Court of Wards for a sum which, at a date somewhat anterior to the present deliverance, amounted to Rs. 21,526, the interest having been running for a certain course of years at the rate of 18 per cent. per annum.

The question in this case, and the sole question, is whether a decree obtained for such sums can be put in execution against the property, which was, at the date of the contraction of the debt, under the management of the Court of Wards.

The sections of the Oudh Land Revenue Act to which reference has been made, are sections 173 and 174. Section 173 is in these terms:—"Persons whose property is under the superintendence of the Court of Wards shall not be competent to create without the sanction of the Court, any charge upon or interest in such property, or any part thereof." Section 174 says:—"No such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence." Their Lordships think that it falls to be observed that the object of these sections was the protection of the property against either transactions entered into by the person under tutelage by way of direct transactions of sale or of mortgage, and also the protection of the property against the consequences of any execution in respect of contracts entered into by a person under such tutelage. Section 174 deals with the latter situation.

The courts below have permitted execution against the property to be granted in respect of this debt—a debt incurred by a person under tutelage. The question is whether that decision is sound in law. There have been various decisions in the Courts in India, notably in Allahabad, which appear fully to support the appeal. But there is one dictum which is founded upon by the Court below which seems to have ruled the minds of the learned Judges in constraining them to give effect to the execution against the property in respect of this debt. The dictum is contained in the case of *Rameshar Bahksh Singh v. Dhanpal Das* (1). It was quite unnecessary, in the view that their Lordships take for the decision of the case, which depended, as it was viewed by the court who decided it, merely upon the construction of a certain decree. That dictum was to the following effect:—“It is quite clear that, under the old Act”—and the reference is either to this Act or an Act in similar terms—“a creditor could obtain a decree upon a bond given by a ward while his property was under superintendence, and execute that decree against the property of the ward after the property was released from superintendence.”

Their Lordships are clearly of opinion that this dictum was an unsound proposition in law. They think that, the object of the Act being the protection of the property, a person subject to the Court of Wards would in no sense be protected if this dictum were to be affirmed. What has been done in the present case seems to their Lordships to be a total violation, not only of the spirit of the Statute, but of the express provision of section 174. The phrase in that section, “while his property is under such superintendence,” is, in their Lordships’ opinion, a phrase annexed to and elucidative of the verbal expression “contract entered into by any such person.” Section 174 is meant to protect property against the execution of a decree made in respect of “any contract entered into” during a certain period of time, namely, while the property is under such superintendence. If such a contract, incurring of debt, or transaction occurred during that time, the law of Oudh is plain under section 174, to the effect that the property is protected against execution in respect

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of any decree following upon that transaction, that debt or that contract.

There is nothing further in the case, and their Lordships will humbly advise His Majesty that this appeal should be allowed with costs.

*Appeal allowed.*

Solicitors for the appellant:—*T. L. Wilson and Co.*

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## REVISIONAL CRIMINAL.

*Before Justice Sir George Knox.*

EMPEROR v. BHAWANI DAT.

*Act No. XLV of 1860 (Indian Penal Code), section 498—Criminal Procedure Code, sections 4, 199, 238(3)—Complaint—Statement made in Court as a witness.*

Where in a proceeding instituted by the police under section 366 of the Indian Penal Code, the husband of the woman appeared as a witness and asked the Magistrate trying the case to drop the proceedings under section 366 as he intended to prosecute the accused under section 498 of the said Code, it was held that the statement made by the husband, as a witness, fell within the definition of complaint as defined in section 4, clause (h) of the Code of Criminal Procedure and therefore a conviction under section 498, treating the statement made by the husband as a complaint, was legal. *In the matter of Ujjala Beva (1) and Queen-Empress v. Kangla (2) referred to.*

THE facts of this case were as follows:—

One Bhawani Dat was charged with an offence under section 366 of the Indian Penal Code. The husband was not a complainant; apparently the police took up the case, but the husband appeared as a witness. While the case was proceeding under section 366 of the Indian Penal Code, he gave his evidence on the 6th of July, 1915. In the *interim* apparently he had asked that the proceedings under section 366 should be dropped, but when examined on the 6th of July he explained that his action in this matter was due to deception practised on him by one Ratti Ram, and he said in most emphatic terms, both in the examination in chief and in cross-examination, that he wished to prosecute the accused.

\* Criminal Revision No. 929 of 1915, from an order of W. J. D. Burkitt, Sessions Judge of Kumaun, dated the 5th of October, 1915.

(1) (1878) 1 C. L. R., 523.

(2) (1900) I. L. R., 23 All., 82.