bound to pay to the plaintiffs compensation for such exclusive use and enjoyment.

The next ground that has been raised before us on behalf of the defendants is one as to interest. The Court below has allowed the plaintiffs interest at the rate of 12 per cent. per annum from the end of each year. We think that under the circumstances of this case, having regard especially to the fact which appears upon the evidence, namely, that the plaintiffs also are in possession of certain *ijmali* lands (the area or situation is not clear), it would not be right and proper to give the plaintiffs interest upon the compensation allowed at the high rate of 12 per cent. per annum. We reduce the interest to 6 per cent. per annum.

These are the only points that have been raised and discussed before us by both sides; and they being disposed of, the result would be that the appeal of the defendants No. 329 should be dismissed, except as regards the rate of interest; while that of the plaintiffs (No. 349) should be partially allowed, it being decreed that save and except the claim for the years 1293 and 1296 (from Assin to Cheyt) the plaintiffs will be entitled to recover compensation from the defendants for the rest of the period comprised in the suit, with interest at the rate of 6 per cent. per annum from the end of each year.

The parties will be entitled to their costs in proportion to the amounts decreed and disallowed.

H. W.

Before Mr. Justice Ghose and Mr. Justice Gordon.

AGHORE NATH CHUCKERBUTTY AND ANOTHER (PLAINTIFFS) *v.* RAM CHURN CHUCKERBUTTY AND ANOTHER (DEFENDANTS.) *

1896 *May* 28.

Execution—Sale—Purchase, by pleader, of client's interest—Duty of pleader—Code of Civil Procedure (Act XIV of 1882), section 317—Specific Relief Act (I of 1877), section 42.

At a sale in execution of a decree against the plaintiffs, the pleader who had acted for the plaintiffs purchased their property with his own money, but in the name of his mohurrir, and for a very inadequate sum.

* Appeal from Original Decree No. 197 of 1894 against the decree of Babu Karunamoy Banerjee, Subordinate Judge of Midnapore, dated the 30th June 1894.

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The plaintiffs thereupon brought the suit against the defendants (the pleader and his mohurrir) for a declaration that the pleader-defendant, in so purchasing, was a trustee on their behalf; for an order directing the defendants to reconvey the property to the plaintiffs, and for other relief.

At the time of filing the suit, possession of the land sold had not been given to anybody.

Held, affirming the decision of the Subordinate Judge, that the suit was not barred, having regard to the case made in the plaint, by section 317 of the Code of Civil Procedure (Act XIV of 1882).

Held, also, that section 42 of the Specific Relief Act (I of 1877) was no bar to the suit.

Held, also (on the merits), that the pleader could not, according to equity and good conscience, retain for his own benefit the property so purchased by him.

IN execution of a decree for rent against the plaintiffs, a certain *durputni* mehal of theirs was advertised for sale. They had appointed the defendant No. 1 and others as their pleaders under a *vakalatnamah* in the following terms:—

"For the purpose of filing petitions, &c., for adjourning the sale, we appoint Babu Modhoo Sudan Dutt, Babu Ram Churn Chuckerbutty, Babu Soshee Bhuson Sircar, and Babu Hari Prosunno Mozumdar, pleaders of this Court, as pleaders on our behalf, and we promise and declare that any of the pleaders, being present in (Court) will file and sign petitions for time, make arguments and otherwise manage the case, &c., and put in and take back money by giving receipts or sign applications for time; and whatever acts are done by him in connection with this execution case shall be admitted and accepted by us. To the above effect we execute this *vakalatnamah*. Dated the 12th June 1893.

ACCEPTED.
(Sd.) RAM CHURN CHUCKERBUTTY,
Pleader.

The 13th June 1893.

The property was put up for sale on the 21st August 1893; the sale, however, was not concluded then, but was resumed on the following day, when only two persons made bids, *viz.*, the clerk of the decree-holder's pleader and the defendant No. 2 who was bidding on behalf of the defendant No. 1. The property was eventually knocked down to the defendant No. 2 for Rs. 990, the amount due to the decree-holder being Rs. 800. The plaintiff subsequently applied under section 174 of the Bengal Tenancy Act for an order cancelling the sale; but their application was refused. They then, on the 17th February 1894

filed this suit for a declaration that the defendant No. 1 purchased the property as trustee for the plaintiffs; for an order directing the defendants to re-convey the property to the plaintiffs upon the plaintiffs paying them the purchase-money and such compensation as the Court might think just; and for other relief.

The plaintiffs set up a contract by the defendant No. 1, whereby he agreed to purchase the property at the sale for Rs. 300 or 350, should the sale not exceed that amount, and to return the property to the plaintiffs on their paying him the purchase-money, together with some compensation, or to consent to the cancellation of the sale under section 174 of the Bengal Tenancy Act. They alleged also that at the sale the defendant stated that he was purchasing on behalf of the plaintiffs, and so induced other persons not to bid, and thereby purchased the property for a small price; that they subsequently offered the defendant the purchase-money and compensation, Rs. 1,039-8-0 in all, which he refused; that he advised them to apply under section 174 of the Bengal Tenancy Act for an order cancelling the sale; that they did so apply, but their application was refused; and that the market value of the property in suit was Rs. 9,233-3-1, and its yearly income Rs. 923-5-3.

The defendant in his written statement denied the allegations on the plaint, and stated that he was engaged as a pleader by the plaintiffs only to make applications for postponements in that particular execution case, although in his evidence he admitted that at the time of the sale he was the plaintiffs' only pleader, and that his intention from the very first was to return the property to the plaintiffs upon receiving the purchase-money and adequate compensation. He pleaded also that section 317 of the Code of Civil Procedure was a bar to this suit.

The Subordinate Judge held that that section was no bar to the suit; and that although the plaintiffs had not proved a distinct contract with the defendant for the sale of the property, yet there was an understanding to that effect between the parties. In that view of the case, he made a decree declaring that the defendant purchased the property for the plaintiffs, and directed a re-conveyance to the plaintiffs within a month, upon their

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paying the defendant the purchase-money and Rs. 150 as compensation.

The defendant appealed.

The Advocate-General (Sir *G. C. Paul*), Dr. *Rash Behari Ghose*, Babu *Saroda Charan Mittra*, Babu *Bidhu Bhusan Gangooly*, and Babu *Sarat Chandra Dutta* for the appellant.—In execution proceedings, the pleader's duty is to watch his client's interests up to the time of sale, but no further. It is not his duty to be present at the sale, unless expressly retained to do so. The *vakalatnamah* limits the duties of the pleader, in this case, to filing petitions for postponing the sale. Therefore at the time of sale the defendant was not the plaintiffs' pleader, and was at liberty to purchase the property for himself.

The lower Court finds that the contract set up by the plaintiffs was not proved. But even taking their own statement of it, then the defendant agreed to purchase the property for the plaintiffs, if it sold for a sum not exceeding Rs. 350; but the price did exceed that amount. The Subordinate Judge was not justified in finding an understanding between the parties after holding that no contract was proved.

Again, this is a suit brought against a certified purchaser on the ground that he has bought for some other person, and, therefore, by section 317 of the Civil Procedure Code it will not lie.

Besides, the suit is a mere declaratory suit, and by section 42 of the Specific Relief Act, such a suit is not maintainable. A mere declaration cannot benefit the plaintiffs; they must claim something further, *e.g.*, recovery of possession. [GHOSE, J.—But I see that at the time of filing the plaint possession of the land had not been given to anybody, so that the plaintiff could not ask for possession; but he prays for a re-conveyance and for other relief.] Even so, the suit would still be barred under section 317 of the Code.

Moreover, such a purchase by the pleader is a valid one. In the case of *Nundeeput Mahta* v. *Urquhart* (1) the judgment-debtor's vakeel purchased the property jointly with the decree-holder; and such purchase, although it was declared to be improper, was not set aside.

(1) 13 W. R., 209.

Even an attorney, if he is not acting as an attorney for his client on a particular occasion, may throw off that character and exercise his independent rights—*Austin* v. *Chambers* (1) ; but a vakil is an advocate, and no more. In his case there is nothing like the confidential relationship that exists between a solicitor and his client. It might be thought that section 292 of the Civil Procedure Code is against the defendant, but that section applies only to an attorney on the Original Side of the High Court. A pleader is not an officer of the Court in such a sense as to debar him, under that section, from purchasing as the defendant has purchased—*Alagirisami* v. *Ramanathan* (2). "A solicitor is under no positive disability to purchase from his client ; yet where the confidential relation subsists, and the transaction is impeached, he must be able to prove its fairness" (3), and "except in cases of undue influence resulting from other professional connections, the rule does not extend to prevent a purchase by a solicitor of his client's property in respect to which he has not been professionally employed, or to prevent his purchasing by auction his client's property, if he has not acted for him professionally in respect to the sale" (4).

Babu *Nilmadhub Bose* for the respondents.—Even though the contract relied on by the plaintiffs is not strictly proved, it is clear that there was an understanding to a like effect between the parties. The defendant admits in his evidence that his intention all along was to return the property. The real wording of the *vakalatnamah* is "for the purpose of adjourning the sale and others," *i.e.*, for other purposes ; and that is clearly an authority to do everything in the execution case. It cannot be said that the defendant's duties and obligations ceased at the time of sale, especially in view of the defendant's admission that at that time he was the plaintiff's only pleader. I do not contend that he is by any law expressly forbidden to purchase, but he must not put himself in a position where his interest conflicted with his duty, and he should have informed his client that he intended to bid—*Subbarayudu* v. *Kottaya* (5).

The defendant either knew the value of the property or he did

(1) 6 Cl. and Fin., 1. (2) I. L. R., 10 Mad., 111.
(3) Dart, V. & P., 44. (4) Dart, V. & P., 46.
(5) I. L. R., 15 Mad., 389.

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not know it. If he knew it, he was aware that he was getting the property for about one-tenth of its value; if he did not know the value, he was presumably buying for the plaintiffs. Had the property been sold for an adequate price, the plaintiffs would justly have got the benefit of it; but it has been knocked down for a grossly inadequate sum to the defendant, the plaintiffs' agent, and he is the only person to benefit by the sale. His purchase is not one that a Court of equity and good conscience would uphold.

The Advocate-General in reply.

The judgment of the Court (GHOSE and GORDON, JJ.) was as follows:—

The facts of this case are shortly these:—

The plaintiffs, Aghore Nath Chuckerbutty and Trailakhya Nath Chuckerbutty, were judgment-debtors in a certain decree for rent obtained by the Administrator-General of Bengal. In due course, the decree-holder applied for the execution of his decree, and the property which forms the subject-matter of this suit was advertised for sale. The judgment-debtors, the plaintiffs, appointed the defendant No. 1, Ram Churn Chuckerbutty, as their pleader to look after the execution case on their behalf. On the 21st August 1893, the property in question was put up for sale. Certain bids were then offered on behalf of the decree-holder's pleader. The sale, however, was not concluded on that day. It was resumed on the next day, namely, the 22nd August; and on that day, it would appear upon the bid papers, that the bids were confined to two individuals, the decree-holder's pleader's clerk and the clerk of Ram Churn Chuckerbutty, the defendant No. 1. The decree-holder's clerk's bid went up to Rs. 800 only—an amount just sufficient to cover the amount due to the decree-holders; and the property was knocked down to Ram Churn's clerk for Rs. 990. Subsequently, an application was presented on behalf of the judgment-debtors under the provisions of section 174 of the Bengal Tenancy Act for the purpose of having this sale set aside, but the application was rejected, because the Court (rightly or wrongly) found that the deposit which had been made by the judgment-debtors was insufficient. Thereupon, the present suit was instituted

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on the 17th February 1894, to have it declared that under the purchase which was made by the defendant No. 1 in the *benami* of his clerk, the defendant No. 2, he acquired no title as against the plaintiffs; that in the matter of the purchase he was merely a trustee for the plaintiffs; and that, therefore, he should be called upon to reconvey the property in question to the plaintiffs upon payment by them of the purchase-money with such compensation as the Court might think just and proper.

The plaintiffs, in support of their case, alleged that about the time of the sale there was a contract between the plaintiff's *agent and the defendant No. 1, their pleader, to the effect* that he (the pleader) should purchase the property at the sale with his own money, and that upon payment by the plaintiffs of the purchase-money, with some *dharati* or compensation, the property should be returned to the plaintiffs; that at the time of the sale the defendant No. 1 declared that he was purchasing the property for the benefit of the plaintiffs; and that by reason of this declaration that he made, he managed to purchase a very valuable property for a very inadequate price; that subsequently the amount of the purchase-money that the defendant had paid, with a certain amount as *dharati* (compensation) was offered to him, but he (the defendant) advised that an application had better be made to the Court under section 174 of the Bengal Tenancy Act to have the sale cancelled; that acting upon that advice, a petition was presented which was opposed by the defendant, and ultimately disallowed by the Court. And the plaintiffs asserted in their plaint that "as defendant No. 1 being plaintiff's pleader, purchased the highly valuable property at a low price by treachery and fraud, no right can accrue to him thereby, and the plaintiff's right cannot be impaired thereby. At law and in equity his purchase is invalid and inoperative as against the plaintiffs, and he should be considered to have purchased as trustee for the plaintiffs."

The answer to this case was a complete denial of the allegations made in the plaint, though the defendant No. 1 in his evidence on oath stated that from the very first he had the intention of returning the property in question to the plaintiffs, if they paid him the purchase-money with adequate compensation.

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It was further pleaded on behalf of the defendants that the suit was barred by reason of the provisions of section 317 of the Code of Civil Procedure.

The Subordinate Judge has held that the provisions of section 317 of the Code of Civil Procedure do not operate as a bar to the maintenance of the suit; and in regard to the merits of the case he has come to the conclusion that, though there was no distinct contract between the plaintiffs' agent and the defendant No. 1 as to the purchase that was to be made by him at the auction sale, and though the defendant No. 1 could not be charged with any positive fraud, yet there was an understanding come to between the parties to the effect that the property should be returned to the plaintiffs, if they paid him back the purchase money with some profit. The Subordinate Judge, in view of the conclusion that he arrived at, has made a declaratory decree to the effect that the defendant No. 1 purchased the property for the plaintiffs, and has directed that the defendants do reconvey the property in question to the plaintiffs within a month, upon the receipt of Rs. 990 *plus* Rs. 150, which he regards as sufficient compensation to the defendant No. 1, and that the plaintiffs do tender this amount to the defendants within fourteen days from the date of the decree; and that in case the defendant No. 1 refuses to accept the said amount, the plaintiffs do deposit the same in Court; and that defendant No. 1 do return the property in suit to the plaintiffs within one month on receipt of the money.

Against this decree the defendants have appealed to this Court; and on their behalf it has been contended by the learned Advocate-General, in the first place, that the suit is barred by reason of the provisions of section 317 of the Code of Civil Procedure; and that the defendant No. 1 having been put into possession of the property under the sale, it was not open to the plaintiffs to ask for a bare declaratory decree: what they should have asked for was consequential relief, that is to say, a decree for the recovery of possession. It has further been contended upon the merits that the contract set up by the plaintiffs in their plaint not having been proved in the opinion of the Court below, the suit should have been dismissed; and it has generally been argued that upon the facts of the case the plaintiffs are not entitled to any relief.

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Now, with regard to the contention raised before us that this suit cannot be maintained, having regard to the provisions of section 317 of the Code, it seems to us that there are two answers to it. In the first place, the true remedy that has been asked for in this case is not against the certified purchaser, the defendant No. 2, but against the defendant No. 1; and in the second place, the suit is not upon the ground that the purchase was made by the defendant No. 1 "on behalf" of the plaintiffs, though, no doubt, his case is that it was for the benefit of the plaintiffs. The policy of the law, as embodied in section 317, evidently is to check *benami* purchases, where one person, under a secret understanding with another, allows the name of that person to appear as the ostensible purchaser, the money employed in the purchase being his, and the beneficial title in the property so purchased being in him. Here, the plaintiffs' case is that the purchase was made by the defendant No. 1 with his own money, but for the benefit of the plaintiffs, and that *that* individual, the defendant No. 1, having managed to purchase the property at an inadequate price by means of treachery and fraud at the time of the sale, he must be taken to have made the purchase as trustee for the plaintiffs. In this view of the matter it seems to us that section 317 of the Code of Civil Procedure can have no application to this case.

Then as regards the other question of law raised, namely, whether the plaintiffs are entitled to maintain the suit merely for a declaratory decree, without asking for any consequential relief, it appears that on the date the plaint was presented, the defendant No. 1 had not obtained possession of the property purchased by him; and, therefore, the only possible remedy that was open to the plaintiffs to ask for was a declaratory relief. He, however, did ask for a consequential relief, the only consequential relief he was then in a position to pray for, which we pointed out in the course of the argument, namely, that the defendant be directed to reconvey the property in question to the plaintiffs. That being so, we overrule this point also.

Then, as regards the merits of this appeal, we must confess that the case is not altogether free from difficulty, but having given the facts our best consideration, we think that there can be no doubt that about the time of the sale there was an understanding

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between the plaintiffs' agent and the defendant No. 1, that if the latter should be able to purchase the property at the sale, he would, upon payment by the plaintiffs to him of the purchase-money, with some compensation, return the property to the plaintiffs. We agree in the view that has been expressed by the Subordinate Judge that no precise contract seems to have been entered into, at any rate such a contract has not been proved; but there can be no doubt, having regard to certain facts to which we shall presently refer, that there was an understanding of the character alleged, and which the Subordinate Judge has accepted as true,—an understanding which the defendant No. 1 seems to have acted upon from the very first to the last.

Now, it will be found upon the record that the application that was presented on behalf of the plaintiffs for setting aside the sale under section 174 of the Bengal Tenancy Act, was made on the 18th September 1893. A week before that date, that is to say, on the 11th September, a plaint was presented on behalf of the defendant No. 1 in the Civil Court for the recovery of a certain amount of money said to be due to him, against the plaintiffs. Upon the same date that this plaint was presented, an application was made on behalf of the defendant No. 1 for the attachment of this very property before judgment. This petition is not upon the record, but we have it upon the evidence of the defendant No. 1 himself that it was so; and what appears to us to be a very significant fact is that he caused the property in question to be attached for the satisfaction of his claim as the property of the plaintiffs.

Now, the conduct of the defendant No. 1 in this connection can be compatible with one theory only, and that theory is, that at the time when the purchase was made, and when this petition for attachment was presented, it was well understood that the purchase was for the benefit of the plaintiffs. The defendant No. 1, however, attempted to get over the difficulty by suggesting, if not distinctly alleging, an erroneous fact; and that fact is, as appears from his evidence at page 76 of the paper-book, that the petition for attachment was made when the plaintiffs' application for setting aside the sale was pending in the Court; but that is not true. As we have already mentioned, the application under section 174 was not made until a

week after the presentation of the plaint in the bond suit, and from the date when the petition for attachment before judgment was presented.

If there be any doubt as to the precise time at which the said petition for attachment was made, one has only to refer to what the defendant No. 1 himself states. He says as follows: "I do not remember whether I attached the mehal in dispute in execution of the decree obtained by me in the bond suit against these plaintiffs;" then says, "I think I caused the said mehal to be attached. The mehal was then standing in my mohurir Ram Gobind's name; and the plaintiffs' application for setting aside the sale was pending. It was on that account that I kept the disputed mehal attached in execution of my decree. I attached previous to judgment along with the filing of the plaint." We have then another significant fact, as appears upon the evidence of Ramdin Bhuttacharjee, the pleader on behalf of the decree-holders. He says as follows: "Ram Churn Babu said to me, 'you are bidding to the ruin of my client; *i.e.*, he talked with me in a way so as to dissuade me from bidding. He said: 'If you bid and purchase, my client will be ruined.' He said to me to that effect. He did not tell me for whom he was bidding. But his client's man having been with him, and from his acts and words it appeared to me clear that he was bidding for his client." Later on, he says: "The bidding continued even after Ram Churn Babu had told me as above. I bid up to about Rs. 1,000. The Administrator-General's claim was about that amount, and Ram Churn Babu objected to the bidding. I did not therefore give higher bids." In cross-examination he repeats the same story. He says: "On arriving at the place of sale, Ram Churn Babu said to me, 'You are bidding for and purchasing the property to the ruin of my client,' and words to this effect he spoke twice or thrice."

Now if this evidence can be accepted, and we might here mention that the Subordinate Judge has accepted it as true, there can be no doubt as to what actually occurred. On the previous day, bids had gone up to Rs. 125. It has just been left in doubt whether on that day the defendant No. 1 was present. It would rather appear that the plaintiffs' agent was then negotiating with the decree-holder's pleader for getting a postponment of the sale.

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He, the plaintiffs' agent, was evidently in hopes of the concession asked for being granted, and it is quite possible that when the sale was commenced on the 21st August, neither the plaintiffs' pleader nor their agent was actually present.

Either on the same evening or on the morning of the next day, the fact that the property would be put up to sale on that day was communicated to the defendant No. 1; and on the 22nd August, when the sale was resumed, both the decree-holder's pleader's clerk, and the clerk of the defendant No. 1, acting on behalf of their respective employers, offered bids; and the biddings, as already mentioned, were confined to these two persons only. At that time, the defendant No. 1 attempted to dissuade Ramdin Bhuttacharjee from bidding at the sale, pleading the cause of his clients. He does not seem to have been much impressed with the persuasion in the beginning; for evidently he was determined to bid up to the amount of the decree; but the moment that amount was reached, he refrained from bidding any further; and he swears that he did so on account of the persuasion of the defendant No. 1. Now, what is the result that followed? The result was that the defendant No. 1, the pleader for the plaintiffs, succeeded in purchasing the property in question for the small sum of Rs. 990—a sum far far below its proper price.

The question then arises, whether, in the circumstances under which the defendant No. 1 succeeded in purchasing the property, he can be entitled to maintain his purchase to the prejudice of the plaintiffs.

Now, referring to the *vakalatnamah*, under which the defendant No. 1 was engaged in the matter of this execution case on behalf of the plaintiffs, it would appear that he was appointed "for the purpose of filing petitions, for adjourning the sale, &c.," and the document states:—

We appoint Babu Madhu Sudan Dutt, Babu Ram Churn Chuckerbutty, Babu Shoshi Bhusan Sarkar and Babu Hari Prasunno Mozumdar, pleaders of this Court, as pleaders on our behalf, and we promise and declare that any of the pleaders being present in Court will file and sign petitions for time, &c., make arguments and otherwise manage the case, &c., and put in and take back money by giving receipts or sign applications for time; and whatever acts are done by him in connection with this execution case shall be admitted and accepted by us," &c.

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So that this pleader was appointed to do everything on behalf of his clients, the plaintiffs, in connection with the execution case, and the defendant No. 1 in his evidence distinctly admits that up to the time of the sale he was acting as the sole pleader on behalf of the two judgment-debtors. That being the case, it seems to us that it would be acting in violation of all rules of equity and good conscience, if we were to hold that the defendant No. 1 is entitled to maintain his purchase to the detriment of the plaintiffs.

We think that the view of the facts and of the law that has been accepted in the case by the Court below is correct; and that, in the circumstances as disclosed by the record of the case, the only decree that the Subordinate Judge could have properly made was the decree that he did make, namely, that the plaintiffs should be entitled to obtain a reconveyance of the property from the defendant on certain terms, those terms being that they should repay to the defendant No. 1 the purchase-money paid by him, with 15 per cent upon that amount, as compensation within a certain time fixed.

We accordingly affirm that decree.

In regard to the costs of this appeal, we think that having regard to the fact that the plaintiffs have been unable to prove the precise contract set by them, each party should bear his own costs in this appeal; and we may mention that that was the course adopted by the Subordinate Judge in the matter of the costs in his Court.

The result is that this appeal is dismissed, but without costs.

H. W. *Appeal dismissed.*

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Rampini.

TARAK CHUNDER SEN (JUDGMENT-DEBTOR) *v.* GYANADA SUNDARI (DECREE-HOLDER.) *

1896 *March* 10.

Limitation Act (XV of 1877), Schedule II, Article 179, clause 4—Application to withdraw a pending proceeding for execution with leave to institute another—Code of Civil Procedure (Act XIV of 1882), section 373—Step in aid of execution of a decree.

An application to [illegible] for execution, with leave

* Appeal from Appellate Order No. 230 of 1895, against the order of G. K. Deb, Esq., Officiating District Judge of Dacca, dated the 25th of April 1895, affirming the order of Babu J. C. Mittor, Subordinate Judge of that District, dated the 8th of September 1894.