

in future all decrees for mesne profits in a suit for recovery of immovable property must be made by the court which grants the decree for possession of the property (the rules provide for the making of a " preliminary " and a " final " decree). The contention put forward on behalf of the respondent is that the court having directed an inquiry as to mesne profits there was no complete, or (to adopt an expression used by their Lordships of the Privy Council) there was no " operative " decree until the mesne profits were ascertained in the year 1910. This very point was considered by a Bench of this Court in the case of *Muhammad Umarjan Khan v. Zinat Begam* (1). The learned Judges in that case referred to the judgement of their Lordships of the Privy Council in *Radha Prasad Singh v. Lal Sahab Rai* (2) and also to a Full Bench decision of the Calcutta High Court. We think that we ought to follow this case, which is in accordance with the practice which has been adopted by the new Code of Civil Procedure and which, moreover, seems to be in accordance with justice. Applying the principle laid down in these cases to the present case, it must be deemed that the " date " of the decree, so far as it related to mesne profits, is the 15th of February, 1910, when the mesne profits were for the first time ascertained. Since that date there have been numerous applications for execution which have saved limitation and made the present application within time. On the general merits we have heard the parties and see no reason to differ from the view taken by the court below. We dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Muhammad Rafiq.

DEBI PRASAD (APPLICANT) v. J. A. H. LEWIS (OPPOSITE PARTY) *
Act No. III of 1907 (Provincial Insolvency Act), section 16 (2), clause (a)—Civil Procedure Code, 1908, section 60—Insolvency—Attachment of half the salary of the insolvent.

One of the creditors of a person who had been declared an insolvent by the Small Cause Court Judge of Cawnpore, but who had since obtained employment

* Civil Revision No. 10 of 1917.

(1) (1903) I. L. R., 25 All., 885. (2) (1890) I. L. R., 18 All., 58.

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in the Government Press in Calcutta, applied to the Court for attachment of half the insolvent's salary for the benefit of his creditors. Held that it was no valid reason for rejecting the creditor's application that its allowance would not leave the insolvent enough to live on. *Ram Chandva Neogi v. Shyama Charan Bose* (1) and *Tulsi Lal v. Girsham* (2) followed.

THE facts of this case were as follows:—

One J. A. H. Lewis was declared an insolvent on the 21st of February, 1910, by the Small Cause Court Judge of Cawnpore. No receiver was appointed by the court to take possession of the property of the insolvent. The reason probably was that there was hardly any property to be made over; only a few *mondhas* were available at the time. The insolvent left Cawnpore soon after. The applicant says that in 1916, when he went to Calcutta, he learnt that the insolvent was employed in the Government Printing Press. On his return from Calcutta the applicant presented a petition to the Court of Small Causes, Cawnpore, on the 15th of April, 1916, praying that half the pay of the insolvent be attached and realized for the benefit of the creditors. A notice seems to have been issued on the application, to which the insolvent replied by a letter to the court, dated the 15th of May, 1916. In that letter he explained that he was a European, had a large family, was living in Calcutta and his pay was not sufficiently large to admit of half of it being attached. The learned Judge, without fixing a date for hearing and giving notice to the creditor, rejected the application on the 20th of May, 1916, saying that the creditor was absent, the insolvent was a European and his pay was not large enough to admit of half of it being attached. The applicant went in appeal to the District Judge, who upheld the order of the first court.

The applicant thereupon applied in revision to the High Court, *Babu Lalit Mohan Banerji*, for the applicant.

The opposite party was not represented.

MUHAMMAD RAFIQ, J. :—This is an application in revision by one of the creditors calling in question the order of the court below dismissing his application made under section 16 of Act III of 1907. It appears that the opposite party, J. A. H. Lewis, was declared an insolvent on the 21st of February, 1910, by the Small Cause Court Judge of Cawnpore. No receiver was appointed

(1) (1913) 18 C. W. N., 1052. (2) (1917) 38 Indian Cases, 410.

by the court to take possession of the property of the insolvent. The reason probably was that there was hardly any property to be made over; only a few *mondhas*, I am told, were available at the time. The insolvent left Cawnpore soon after. The applicant says that in 1916, when he went to Calcutta, he learnt that the insolvent was employed in the Government Printing Press. On his return from Calcutta the applicant presented a petition to the Court of Small Causes, Cawnpore, on the 15th of April, 1916, praying that half the pay of the insolvent be attached and realized for the benefit of the creditors. A notice seems to have been issued on the application, to which the insolvent replied by a letter to the court, dated the 15th of May, 1916. In that letter he explained that he was a European; had a large family; was living in Calcutta, and his pay was not sufficiently large to admit of half of it being attached. The learned Judge, without fixing a date for hearing and giving notice to the creditor, rejected the application on the 20th of May, 1916, saying that the creditor was absent; the insolvent was a European, and his pay was not large enough that half of it should be attached. The applicant went in appeal to the District Judge, who upheld the order of the first court. In his application for revision to this Court the applicant contends, and I think rightly, that the reasons given by the courts below are no reasons at all for rejecting his application made under section 16 of Act III of 1907. When an appropriation of the income of an insolvent is made for the benefit of the creditors, the Court usually acts on the principle of giving to the creditors the surplus after allowing sufficient portion of income for the proper maintenance of the insolvent according to his position in life. The statute-law, in this country, has, however, fixed this proportion by section 60 of the Civil Procedure Code, read with section 16, sub-section 2, of Act III of 1907. There is no rule under which such an order as that passed by the courts below can be passed or upheld. I may here mention two cases which bear out the contention of the applicant, *Ram Chandra Neogi v. Shyama Charan Bose* (1) and *Tulsi Lal v. H. Girsham* (2).

I therefore set aside the order of the courts below and direct the court of first instance to attach half the pay of the insolvent. Costs are allowed to the applicant.

Application allowed.

(1) (1913) 18 C. W. N., 1052. (2) (1917) () 38. Indian Cases, 410.

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