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June, 18.

Before Sir George Knox, Acting Chief Justice, and Justice Sir Pramada Charan Banerji.

ABDUL RAHIM (PLAINTIFF) v. SITAL PRASAD (DEFENDANT).*

Execution of decree—Attachment of property of a third party as that of the judgment-debtor—Property attached damaged as a consequence of the resistance of the decree-holder to its release—Liability of decree-holder.

A creditor of A, who had been adjudged an insolvent, caused certain goods belonging to B to be attached by the receiver, in insolvency, alleging them to be the property of his debtor. B raised objections to the attachment, but the creditor contrived to keep the property, which consisted mainly of woollen goods, in the hands of the Receiver for a considerable period. The goods remained packed up throughout the rainy season and suffered considerable injury owing to the ravages of insects. B, the owner of the goods, sued the creditor for compensation.

Held that the damage to B's property was the natural and probable consequence of the action taken and persisted in by the decree-holder, and that he was liable in damages to B. *Sharp v. Powell* (1) and *Kissoimohun Roy v. Harsukh Das* (2) referred to.

THIS was an appeal by the plaintiff from a judgment of a single Judge of the Court allowing the defendants' appeal and dismissing a suit which had been decreed (though not to the full extent of the plaintiff's claim) by both the courts below.

The facts of the case are fully stated in the judgment of the Court.

Maulvi Iqbal Ahmad, for the appellant.

Dr. Surendra Nath Sen, for the respondent.

KNOX, A. C. J., and BANERJI, J.:—The appellant Abdul Rahim says that he kept a pedlar's shop in the city of Meerut. The goods from this shop were taken from time to time to fairs and exhibitions. His father Abdul Qayum carried on the same business. He was declared an insolvent some time prior to 1913. Abdul Qayum had his shop in the Meerut Cantonments, quite separate and distinct from the shop kept by Abdul Rahim. In the year 1913, Abdul Rahim took a large amount of goods (most of them woollen goods) to the fair or exhibition held at Bulandshahr. According to the plaint, Sital Prasad (respondent to this appeal and a creditor of Abdul Qayum, the insolvent) presented an application based on wrong allegations to the Additional Judge of Meerut. The date of the application, which

* Appeal No. 50 of 1917, under section 10 of the Letters Patent.

(1) (1872) L. R., 7 C. P., 253 (253). (2) (1889) I. L. R., 17 C. Lc., 436 (443).

is No. 35C on the record, was the 13th of February, 1913, and the prayer in it was that the goods of Abdul Rahim in the exhibition at Bulandshahr might be taken into the custody of the court, as the shop and the goods were the shop and the goods of Abdul Qayum, the insolvent. The Additional Judge of Meerut ordered the Receiver to attach the goods. The Receiver on the 14th of February, acting upon indications given by Sital Prasad attached all the goods at the exhibition, the value of which, the plaintiff says, was Rs. 500, packed them in boxes and brought them into Meerut. On the 18th of February, Abdul Rahim presented an application to the court which had attached the goods and prayed that after thorough inquiry made by the court, the attached goods might be declared the property of Abdul Rahim and released in his favour. On the 4th of July, 1913, the application was granted and on the 5th, Abdul Rahim asked for the return of the goods. Upon this Sital Prasad objected to the delivery as he said he intended to appeal to the High Court at Allahabad, and prayed that the goods might remain in the custody of a Receiver pending the result of his appeal. On the 4th of July, 1913, Sital Prasad got an injunction from this Court and he also got permission to appeal from the order of the Additional Judge of Meerut. This appeal was heard on the 6th of December, 1913, and dismissed. The goods which had been attached were returned to Abdul Rahim on the 9th of January, 1914, and were found to be badly damaged. There has been some confusion as regards the cause of damage. In certain places in the judgment of the courts below the damage is attributed to destruction by "white-ants." It is not easy to understand why or how the white-ants were introduced into the case. What Abdul Rahim said was the cause of the mischief done was the work of insects, such as appear in woollen goods when they are shut up and not aired during the rainy season, and this was the season in which the goods, which were to have been released on the 4th of July, 1913, remained in the custody of the Receiver until the 9th of January, 1914, when they were returned. The defence put in by Sital Prasad was to the effect that he was only a creditor and that he informed the court of what he had ascertained and from which he was satisfied that the

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goods were not the goods of Abdul Rahim but the goods of Abdul Qayum. He maintains that he acted in good faith and that if any damage was caused to the goods, it was the Receiver's act. Abdul Rahim and Abdul Qayum, he said, were joint, had no separate capital, and when the goods were at the Bulandshahr fair Abdul Qayum was ostensibly in possession of them. He maintains that he had never applied for the detention of the goods but that security should be taken from Abdul Rahim if they were returned to him. From the above statement it will be seen that the goods (which are found to have been damaged by the agency of insects) would not have passed from the possession of the appellant on the 14th of February, 1913, had it not been for the application presented by Sital Prasad in the court of the Additional Judge at Meerut on the 13th of February, 1913. We have heard the contents of the application made by Sital Prasad (paper No. 35C of the record). It is supported by an affidavit sworn to by Sital Prasad. In this affidavit Sital Prasad solemnly affirms that the insolvent Abdul Qayum had not sold his goods but had taken them to the Bulandshahr exhibition. No attempt was made to dispute the allegations that it was Sital Prasad who identified and pointed out the goods which the Receiver attached. Sital Prasad must, therefore, have been fully aware that a large number of the goods attached, more than half of them, were goods wholly or mainly manufactured from wool. The courts below have found that the act of Sital Prasad was a wrongful act. This being so, he became responsible for the ordinary consequences which were likely to result from this wrongful act of attachment. Furthermore, when the appellant applied for the goods to be handed back to him, as they had been found by the court to be his goods, the respondent again opposed the application (see paper 39C.) and prevented their return. Regarding this opposition the learned Judge of this Court rightly observes that the order made by the Court which had heard the case, has an important bearing upon the question whether the defendant, Sital Prasad, was acting without reasonable and probable cause, because that order could not have been made unless the Court realized that although it had decided against the defendant, there was reasonable

ground for the defendant appealing to the High Court. We do not for a moment question the right of appeal by Sital Prasad, and we allow that the Court granting leave to appeal must have considered that there was a good case for such an appeal. But was there an equal necessity for the application which followed and in which Sital Prasad asked for an injunction restraining the release of the goods pending the appeal? The learned Judge of this Court rightly observes that from the moment Sital Prasad applied for this injunction a totally different set of consideration arises. It was a fresh act done by Sital Prasad, and he adds that it was necessary for Abdul Rahim, if he had a case to show, if he relied upon this act of Sital Prasad, that such act or application was a wrong to him and that the damage done by the insects was the result of that order. The finding of the Munsif upon this matter is somewhat loosely worded. He says the goods probably got damaged during the period that the appeal was pending in the High Court. It is a well-known fact that goods are generally eaten up by worms, as he calls them, during the rains. The lower appellate court expressed itself satisfied that the immediate result of the attachment was the damage done to the goods and the deterioration in their prices. This point, he adds, has been fully dealt with by the learned Munsif in his judgment and he decides it against the appellant before him (i.e., Sital Prasad). Some attempt was made to attack this finding as being based on no evidence; but this point was not taken in the appeal or petition either to the learned Judge of this Court or to us. Sital Prasad knew that the goods which he had attached were articles mainly made from wool; he knew, as every inhabitant of this part of India knows, that woollen goods packed away in boxes during the rains breed, as a natural and probable consequence, worms which riddle woollen articles through and through and render them worthless. Generally speaking, as BOVILLE, Chief Justice, points out in *Sharp v. Powell* (1), "One who commits a wrongful act is responsible for the ordinary consequences which are liable to result therefrom. But generally speaking, he is not liable for damage which is not the natural or ordinary consequence of such an act, unless it be shown

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that he knows or has reasonable means of knowing that consequences not usually resulting from the act are by reason of some existing cause likely to intervene so as to occasion damage to a third person." The existing cause of which Sital Prasad was fully aware, was that these woollen goods were about to be shut up and owing to climatic cause which prevail during the rains, would be damaged most materially by insects bred and breeding in them whilst they were so shut up. Their Lordships of the Privy Council in *Kissorimohun Roy v. Har-sukh Das* (1) point out that there is no analogy between the two systems regarding the law of execution which prevails in India and which prevails in England. "In England the execution of a decree for money is entrusted to the Sheriff, an officer who is bound to use his own discretion and is directly responsible to those interested for the illegal seizure of goods which do not belong to the judgment-debtor. In India warrants for attachment in security are issued on the *ex parte* application of the creditor, who is bound to specify the property which he desires to attach, and its estimated value." The illegal attachment of Abdul Rahim's goods was the direct act of Sital Prasad, for which he became immediately responsible in law, and the litigation which underlay and consequent depreciation of the goods together with the climatic conditions which contributed still further to that depreciation, may well be considered the natural and necessary consequences of that unlawful act. We do not think that in a case of this kind any question of reasonable and probable cause arises and that it is for the plaintiff to prove the absence of reasonable and probable cause.

As regards damages, after hearing both parties, we think that the damages assessed by the Additional Judge of Meerut were fair and just damages.

We decree the appeal, set aside the order of the learned Judge of this Court and restore that of the lower appellate court with costs of both hearings in this Court.

Appeal decreed.

(1) (1889) I. L. R., 17 Calc., 428 (443).