APPELLATE CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Ashworth.

LACHMAN (DECREE-HOLDER) *v.* JARBANDHAN (JUDGEMENT-DEBTOR).*

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Civil Procedure Code, section 60—Execution of decree—"Debts"—Attachment—Debts not yet due.

The word "debts" as used in section 60 of the Code of Civil Procedure applies only to debts actually due : it cannot include debts, e.g., rent, which may become due in the future. Rent which has not yet become due can not be attached either as a debt or as an actionable claim. *Sher Singh* v. *Sri Ram* (1), and *Webb* v. *Stenton* (2), referred to.

THIS was a second appeal arising out of an objection made by a judgement-debtor to the attachment of certain rent alleged to be due to him as an occupancy tenant from his sub-tenant. At the date of the attachment, the rent of which attachment was made had not become payable by the sub-tenant, the period in respect of which the rent was attached being still incomplete. The judgement-debtor accordingly objected that this rent was not covered by the provisions of section 60 of the Code of Civil Procedure. The first court held that as the rent had become due at the date when the objection was heard, it was immaterial that the attachment was made before the rent had become due. It also held that there was no reason why rent could not be attached in advance, i.e., before it became due. In appeal, the District Judge upheld the contention of the judgement-debtor on the ground that on the authority of *Sher Singh* v. *Sri Ram* (1) profits not yet accrued due were not susceptible of attachment.

*Second Appeal No. 1508 of 1926, from a decree of D. C. Hunter, District Judge of Allahabad, dated the 15th of July, 1926, reversing a decree of Rup Kishen Agha, Subordinate Judge of Allahabad, dated the 17th of April, 1926.

(1) (1908) I.L.R., 30 All., 246. (2) (1883) 11 Q.B.D., 518.

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The decree-holder appealed.

Munshi *Haribans Sahai*, for the appellant.

Babu *Piari Lal Banerji*, for the respondent.

THE judgement of ASHWORTH, J., after stating the facts as above, thus continued :—

In this appeal it is submitted that this case was not relevant to the present facts. In that case it was clearly held that what was attached was a right to certain profits which might never become due, whereas in the present case there can be no question that at the date of the attachment there was a certainty that the rent would become due. Reference, however, in that decision was made to the English case of *Webb* v. *Stenton* (1). In that case the Queen's Bench held in effect that a debt involves (*a*) an obligation incurred by the debtor, and (*b*) a liability on the part of the debtor to pay for that obligation at a certain date. Until the obligation had been fully incurred, there is no debt. "Accruing" did not mean that the obligation was incomplete, but merely that the date for payment had not arrived. "Debitum in presenti, solvendum in futuro." Rent in respect of a period still in existence is thus not a debt at all, as the obligation is not complete.

This decision equally disposes of the argument that this rent could be attached, if not as a debt, still as saleable property, that is to say, "an actionable claim". An actionable claim is "a claim to a debt, existent, accruing, conditional or contingent". The last four words do not alter the situation, if there is no debt.

It has been suggested that the "saleable property" is not the rent, but the title to recover it for the period in question. A title (unlike a debt) accrues when the instrument creating it has been executed. But it is not the title that the decree-holder purported to attach.

(1) (1883) 11 Q.B.D., 518.

Moreover, an occupancy tenant cannot transfer his title except by a sub-lease for five years (in which case he gets the rent and his landholder is not prejudiced) under sections 23—34 of the Tenancy Act.

For these reasons I hold that the lower appellate court was correct in its decision, and would dismiss the appeal with costs.

MUKERJI, J.—I entirely agree with my learned brother that the word "debts" as used in section 60 of the Code of Civil Procedure must be confined to a debt in the ordinary sense of the word, that is to say, an existing debt. It appears to me that the several articles that have been declared by the opening portion of section 60 as liable to attachment and sale have been given only by way of an illustration. The important words are, "all saleable property, moveable or immoveable, belonging to the judgement-debtor . . . . ;" these are liable to be attached and sold. It is only by way of illustration that the words, "lands, houses, etc." have been added. If this view of mine be correct, the word "debts" could have been used only as illustrating what is liable to be attached and sold. A person may be a debtor under a bond, although the money due under the bond does not accrue payable till a future date; for the liability is there to pay. In the present case, it cannot be said that at the date of the attachment the sub-lessee was "in arrear" to the occupancy tenant, the judgement-debtor. If the sub-lessee was not in arrear, it cannot be said that there was a debt due by him to the occupancy tenant. If at the date of the attachment, the sub-lessee was dispossessed, he could not be called upon to pay. His liability was not complete till he had held for the required period.

As regards the question whether the right to recover the rent could or could not be attached and sold under

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the latter portion of section 60 of the Code of Civil Procedure, I need not add anything to what has fallen from my learned brother.

BY THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Sulaiman and Mr. Justice Kendall.

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MUHAMMAD NAZIR AND ANOTHER (DEFENDANTS) *v.* ZULAIKHA BIBI (PLAINTIFF).*

Act No. IX of 1908 (*Indian Limitation Act*), *schedule* 1, *articles* 91 *and* 120—*Limitation*—*Difference between a deed which is null and void and one which is good but voidable.*

Where a deed is *ab initio* null and void, there is no necessity for a person who considers himself aggrieved thereby to come to court promptly and have the deed actually cancelled or set aside, but where a deed is good but is voidable at the option of the party aggrieved, he must come to court within three years to have it set aside.

A suit for a declaration that a transaction embodied in a particular deed was, from its very inception, a sham transaction is to be distinguished from a suit for cancellation of the deed and does not fall within the purview of article 91 of the first schedule to the Indian Limitation Act, 1908. *Sangawa* v. *Huchangowda* (1), *Petherpermal Chetty* v. *Muniandy Servai* (2), and *Jagardeo Singh* v. *Phuljhari* (3), followed.

THE facts of this case sufficiently appear from the judgement of the Court.

Dr. *Surendra Nath Sen* and Mr. *B. Malik*, for the appellants.

Maulvi *Mukhtar Ahmad* and Pandit *Brijmohan Lal Dave*, for the respondent.

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*Second Appeal No. 1282 of 1925, from a decree of D. C. Hunter, District Judge of Allahabad, dated the 3rd of April, 1925, confirming a decree of V. Mehta, Subordinate Judge of Allahabad, dated the 19th of May, 1924.

(1) (1923) I.L.R., 48 Bom., 166. (2) (1908) I.L.R., 35 Calc., 551. (3) (1908) I.L.R., 30 All., 375.