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ADRI PRA-
SAD
v.
AULAT RAM.

of the Specific Relief Act. The argument is a specious one and at first sight would appear to have some force, for it seems only equitable that specific performance of a contract should not be enforced where property would be affected that had passed into the hands of "a transferee for value, who has paid his money in good faith and without notice of the original contract." But if the question of notice could enter into our consideration in the present case which it properly cannot, the implication of notice is irresistible. The instrument of August, 1877, and the bond of October, 1877, were executed within two months of one another and registered in the Bulandshahr registry; and it passes belief that, being fully alive to the purposes and objects of the registration law, the obligees of the bond should have made no inquiries at the office to ascertain whether there were any prior charges on their security. But apart from this we entertain very grave doubts whether the exception of sub-section (b) of s. 27 of the Specific Relief Act could have any application to the circumstances of this case, where the contest lies between a prior and subsequent lien created upon the same property, which has passed to the transferee under a sale in execution of a decree for enforcement of the subsequent lien.

The appeal is decreed with costs, and we declare the plaintiff appelland entitled to a decree in full for the relief sought by him in his petition of plaint.

Appeal allowed.

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April 22.

CIVIL JURISDICTION.

Before Mr. Justice Oldfield and Mr. Justice Straight.

HIMALAYA BANK (PLAINTIFF) v. HURST AND ANOTHER (DEFENDANTS).

Sale in execution of Small Cause Court decree—Rateable division of sale-proceeds—Holder of decree made by Judge of Small Cause Court in the exercise of the powers of a Subordinate Judge—Act X of 1877 (Civil Procedure Code), s. 295.

The Judge of a Court of Small Causes sitting in the exercise of his powers as such and in the exercise of his powers as a Subordinate Judge is not one and the same Court but two different Courts.

Held, therefore, that the holder of a decree made by the Judge of a Small Cause Court in the capacity of Subordinate Judge, who had applied to such Judge acting in that capacity for execution of his decree, was not thereby entitled to

share rateably, under s 295 of Act X of 1877, in assets subsequently realized by sale in execution of a decree made by such Judge in the capacity of Judge of such Small Cause Court.

THIS was a reference to the High Court by Mr. F. H. Fisher, Judge of the Court of Small Causes at Dehra Dún. The facts which gave rise to this reference are sufficiently stated for the purposes of this report in the judgment of the High Court.

Messrs. *Ross and Hill*, for the Himalaya Bank.

The judgment of the High Court (STRAIGHT, J., and OLDFIELD, J.,) was delivered by

STRAIGHT, J.—This is a reference by the Small Cause Court Judge of Dehra Dún under s. 617 of the Civil Procedure Code. The following are the circumstances that have led to its being made. On the 23rd May, 1879, a decree was passed by the Small Cause Court in favour of the Himalaya Bank against Joseph Hurst and B. J. White for the sum of Rs. 448-4-6. Prior to this date a Mrs. Hammond had obtained a decree against Joseph Hurst in the year 1877 for Rs. 6,961-6-5, and in 1879 one George Hunter had also obtained a decree for Rs. 2,308-7-4, against Hurst. It must be noted that the Small Cause Court Judge of Dehra is vested with extraordinary powers as a Subordinate Judge, and the two decrees of Hammond and Hunter were both passed by him in his character of Subordinate Judge. Subsequently to their decrees applications were made to the Subordinate Judge by Hammond and Hunter for execution. The Himalaya Bank also applied to the Small Cause Court for execution of its decree, and ultimately a sale was held under that decree on the 10th November, 1880, by which Rs. 641-2-0 were realized, and this sum is now held in deposit by the Small Cause Court. After this sale Hammond and Hunter applied under s. 295 of the Civil Procedure Code to the Small Cause Court to be allowed to participate rateably in the proceeds. The substantial point now referred to us is, whether, having regard to the circumstance that they are decree-holders of the Subordinate Judge's Court, it is competent to them to share in the assets realized from the sale in execution of the Small Cause Court decree in favour of the Bank. It may incidentally be observed that in 1878, when Mrs. Hammond had already obtained her

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decree, Hurst presented a petition to be declared an insolvent, and the amount of her judgment-debt was scheduled in the list of creditors. Ultimately an order was passed declaring Hurst an insolvent, and it would therefore seem that her judgment-debt under s. 351 of the Civil Procedure Code became a decree of the Court of the District Judge. This, however, is not important in view of the construction we feel ourselves constrained to place upon s. 295 of the Code. In our opinion, the Small Cause Court Judge in his more limited jurisdiction on the one hand, and in his larger jurisdiction of Subordinate Judge on the other, fills two distinctly different judicial characters. The sale in execution of the decree of the Bank was directed by him as Judge of the Small Cause Court. The applications made to him by Mrs. Hammond and Mr. Hunter for execution of their decrees were in his character of Subordinate Judge. It is obvious, therefore, that the terms of s. 295 had not been satisfied. The assets have been realized by sale by the Small Cause Court. Prior to their realization Mrs. Hammond and Hunter had not applied to the Court that afterwards received such assets for execution of decrees for money against Hurst; but on the contrary their applications for execution were to the Subordinate Judge's Court. They were not therefore entitled to come in and ask the Small Cause Court Judge to allow them to share in the proceeds acquired by the sale in execution of that Court's decree, on the strength of the two decrees of the Subordinate Judge's Court. This being the view we entertain, the reference must be answered accordingly.

APPELLATE CIVIL.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

KISHEN LAL AND OTHERS (PLAINTIFFS) v. KINLOCK (DEFENDANT).*

Vendor and Purchaser—Agreement by purchaser to refund purchase-money in case land sold proved deficient in quantity—Suit for refund—Suit for compensation for breach of contract—Act XV of 1877 (Limitation Act), sch. ii, No. 65.

The vendor of certain land agreed in the conveyance, which was registered, that, in case the land actually conveyed proved to be less than that purporting to

* Second Appeal, No. 768 of 1880, from a decree of R. G. Currie, Esq., Judge of Aligarh, dated the 23rd April, 1880, modifying a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 16th December, 1879.

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