

been entered in such schedule, as he did not claim more than the insolvent admitted to be due to him.

Babu *Ram Das Chakarbat*i, for the appellant.

The respondent did not appear.

The Court (STUART, C. J., and TYRRELL, J.) delivered the following

JUDGMENT.—The appellant is clearly an unscheduled creditor, and is not the less so because no schedule had been framed. He is therefore entitled, under s. 353 of the Civil Procedure Code, to apply to the Court, which had exercised insolvency jurisdiction in favour of his debtor, to receive evidence of the amount and particulars of his pecuniary claim against the said debtor, who had been declared an insolvent under s. 351 *supra*, and to seek for the insertion of his name in a schedule to be framed by the Court, as a creditor for the debt he may succeed in proving. The limitation of ninety days provided by law for making such an application (see art. 174 of the Limitation Act) had not expired when the appellant made his application, and it was therefore wrongly rejected by the Court below, which has misapplied s. 352 to the case, and has misunderstood the word “then” as contained in that section. This word refers to sequence of procedure, and not to periods of time or dates. In other words, it is logical, as distinguished from chronological, in its import. We set aside that order, and direct the Court now to entertain the application, and to dispose of it according to law.

*Before Mr. Justice Straight and Mr. Justice Brodhurst.*

TEGH SINGH (PLAINTIFF) v. AMIN CHAND AND ANOTHER (DEFENDANTS)\*

*Uncertified adjustment of decree—Civil Procedure Code, s. 258—Question as to adjustment between decree-holder and third party.*

Certain immoveable property having been attached in execution of a decree for money, dated in 1879, directing the sale of such property, T, who had purchased such property in 1880, objected to the attachment. His objection having been disallowed, he sued to establish his right to the property and for the removal of the attachment. He claimed on the ground, amongst others, that the decree of 1879 had been wholly adjusted. The alleged adjustment had not been certified under s. 258 of the Civil Procedure Code. *Held* that the provisions of that sec-

\* Second Appeal No. 708 of 1882, from a decree of H. G. Keene, Esq., Judge of Saharanpur, dated the 30th March, 1882, reversing a decree of K. Scott, Esq., Subordinate Judge of Dehra Dun, dated the 13th February 1882.

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tion did not debar the Courts trying the suit from determining, as between T and the decree-holder, whether the decree of 1879 had been adjusted or not. *Sita Ram v. Mahipal* (1) and *Shauli v. Ganga Suhai* (2) followed.

THE facts of this case were as follows:—On the 11th September, 1876, Daulat Singh, defendant, mortgaged to Amin Chand and Kashmiri, defendants, his interest in, among other fields, Nos. 382, 394, and 402. Subsequently Amin Chand and Kashmiri brought a suit on their mortgage, and by virtue of a compromise obtained in 1879 a decree for the recovery of Rs. 183-2-6 by enforcement of lien against the properties charged. No execution of this decree was taken out, and an arrangement was come to between Daulat Singh and his judgment-creditors, that for the satisfaction of the decree he should transfer to them his right and interests in two villages, not included in the original mortgage, named Dhawa and Gujrara. Daulat Singh, however, failed to carry out his undertaking, and the judgment-creditors thereupon instituted a suit against him, asking, alternatively, that the agreement to transfer should be enforced or rescinded. This suit was by consent referred to arbitration, and an award was passed, subsequently embodied in a decree dated in 1880, by which it was declared that Daulat Singh should do all things necessary to complete the transfer of the two villages upon payment of the sum of Rs. 24-8, less the costs of the suit, by Amin Chand and Kashmiri, or failing to make such transfer, that he should pay Rs. 255-8 with costs. On the 25th January, 1880, Daulat Singh, having done nothing in obedience to the decree, Amin Chand, in execution of it, attached, among others, the fields Nos. 382, 394, and 402. Thereupon the plaintiff in this suit intervened on the strength of a sale-deed of the 13th January, 1880, by Daulat Singh to him of these very fields with others, and prayed that the attachment might be removed and the property released. The application was refused, and hence the present suit against Daulat Singh, Amin Chand, and Kashmiri, which was instituted on the 9th November, 1881. The relief sought was for a declaration of the plaintiff's title and an order directing the withdrawal of the attachment. The Court of first instance decreed the claim, but this decision was reversed by the District Judge on appeal, on the ground that the adjustment of the

(1) I. L. R., 3 All. 533.

(2) I. L. R., 3 All. 533.

decree of 1879, not having been certified to the Court executing it, could not, under the provisions of s. 258 of the Civil Procedure Code, be recognized in Court.

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The plaintiff appealed to the High Court upon two grounds, viz., that the defendants Amin Chand and Kashmiri could not revert to the decree obtained by them in 1879 for enforcement of lien, when it was superseded or rather satisfied by the subsequent agreement for the transfer of Dhawa and Gujrara, and the decree passed on the award in 1880; (ii) that the District Judge was wrong in holding that s. 258 of the Procedure Code prohibited him from recognizing the subsequent agreement or adjustment of the decree of 1879, such adjustment not having been certified to the Court executing that decree.

Pandit *Nand Lal*, for the appellant.

Munshi *Hanuman Prasad*, for the respondents.

The Court (STRAIGHT and BRODHURST, J.J.,) delivered the following judgment:

STRAIGHT, J.—It is obvious that this latter plea must be dealt with first, and in reference to it we may remark that there are two decisions of this Court—*Sita Ram v. Mahipal* (1)—*Shadi v. Ganga Sahai* (2)—directly in point, which lay down that the expression “any Court” in s. 258 has reference to Courts executing decrees, and not to a Court entertaining a separate suit. In the present instance the plaintiff, on the basis of his sale-deed, asserts his title to the fields, and is met by the defendants Amin Chand and Kashmiri with the allegation that they have a lien upon such fields by virtue of the decree of 1879. As between Daulat Singh and them, the adjustment subsequently made could not of course be recognized in any execution proceedings under s. 244 of the Code, but as between themselves and the plaintiff it is impossible to understand how or why the latter should be debarred from showing that the lien the former assert has either been abandoned, or has been discharged as effectually as if it had been satisfied by a cash payment of the judgment-debt. We think, therefore, that the Judge took an erroneous view in holding himself prohibited by s. 258 from con-

(1) I. L. R., 2 All. 533.

(2) I. L. R. 3 All. 538.

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sidering the question as to the alleged adjustment of the decree of 1879, and the case must go back under s. 566 for a finding on the following issue:—At the time the agreement was entered into between Daulat Singh and the defendants Amin Chand and Kashmiri, as to the transfer of the villages of Dhawa and Gujrara, was it the intention of the parties that the decree of 1879 should be superseded by such new arrangement; and was such agreement regarded by them at that time as an adjustment of that decree?

In determining this issue the Judge may advantageously peruse some remarks of this Court at page 696 of the third volume of the Allahabad Series, Indian Law Reports, as showing the principal to be applied in the matter of mortgage, which may guide him in determining the question of intention in this case.

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*Before Mr. Justice Straight and Mr. Justice Brodhurst.*

KALKA PRASAD (JUDGMENT-DEBTOR) v. RAM DIN AND ANOTHER  
(DECREE-HOLDERS.)\*

*Execution of decree—Cross-decrees—Simple money-decree—Decree enforcing mortgage—Civil Procedure Code, ss. 246, 247.*

S. 246 of the Civil Procedure Code is applicable to cross-decrees and not to cross-claims under one decree. To make s. 247 of the Code applicable in the case of cross-claims under one decree, the parties entitled thereunder to recover from each other must hold the same character and possess identical rights of enforcing execution, and enforcement of the decree can only be refused, or satisfaction entered up, when this is the case.

*Held*, therefore, where a decree for money of a Court of first instance directed that the money should be realizable from certain specific property of the defendant, and exempted his person and other property, and the lower appellate Court modified this decree by extending it to the person of the defendant, and in second appeal the High Court set aside the lower appellate Court's decree and restored that of the first Court, directing that the costs of the defendant in the lower appellate Court and in the High Court should be paid by the plaintiff, that, inasmuch as the plaintiff was only entitled to recover the judgment-debt due to him from the defendant from such specific property, whereas the defendant was entitled to recover the judgment-debt due to him from the plaintiff from his person and property, the provisions of s. 247 were not applicable.

THE respondents obtained a decree against the appellant for the principal and interest due on a bond, costs of the suit, and

\* Second Appeal No. 33 of 1882, from an order of H. A. Harrison, Esq., Judge of Farukhabad, dated the 13th May, 1882, reversing an order of Pandit Jagat Narain, Subordinate Judge of Farukhabad, dated the 29th March, 1882.