

belonged to any person other than the owners of the house, his judgment-debtors. The plaintiff purchased the cotton with full knowledge of these circumstances, and must be understood to have purchased it subject to the consequences of the attachment, and at a price which took into account the risks which the attachment involved. The sale by Jodha was made after the attachment had been removed. The cotton was released only because the decree-holder failed to prove that it belonged to his judgment-debtors, and even in this case, while the Court of first instance found that the plaintiff had totally failed to prove that the cotton belonged to his vendors, all that the lower appellate Court has found is that the plaintiff "received it from Parbati, Ishri and Jodha;" and that "if they were not the actual owners of the cotton, they were brokers or agents for the sale of it"—a finding which clashes with the plaintiff's own allegation, that he himself was the broker to whom the cotton had been intrusted for sale.

We decree this appeal and disallow the respondent's objections; and setting aside the decree of the lower appellate Court, restore that of the Court of first instance. The costs incurred in all the Courts to be borne by the plaintiff-respondent.

Appeal allowed.

Before Mr Justice Tyrrell and Mr. Justice Mahmood.

**RADHA PRASAD SINGH (PLAINTIFF) v. RAJENDRA KISHORE SINGH
AND OTHERS (DEFENDANTS).***

1882
September 14.

Compromise—Assignment pending suit—Civil Procedure Code, s. 372.

The "cases of assignment, creation or devolution" of any interest pending a suit contemplated by s. 372 of the Civil Procedure Code are those in which "the person to whom such interest has come" is arrayed on the same side in the suit as "the person from whom it has passed."

Held therefore that a compromise in a suit for land, between the plaintiff and one of the defendants, whereby the latter consented to a decree being given to the former for half the land, was not a "case of assignment" of an interest in such land within the meaning of that section.

During the pendency of this suit in the Court of first instance a deed of compromise was executed by Maharaja Radha Prasad Singh, Bahadur, Maharaja of Dumraon, plaintiff, and Maharaja Krishn

* First Appeal No 154 of 1881, from an order of Maulvi Mahmud Bakhsh, Subordinate Judge of Gházipur, dated the 11th November, 1881.

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Partap Sahi, Bahadur, Maharaja of Hatwa, one of the defendants to the suit, on the 18th August, 1879, which ended in the following terms:—"We, the two parties, have, after full consideration and deliberation, settled the dispute in question, and we therefore file this deed of compromise containing the terms mentioned above, and pray that it may be accepted, and a decree may be given to the plaintiff for half of the land in suit under the terms of this deed." The compromise appeared to have been filed on the 9th October, 1879, and the issues in the case were fixed on the 26th February, 1881. On the 8th November, 1881, an application was made on behalf of the plaintiff on the ground of the compromise above-mentioned, and the material portion of the application stated that at the time of the institution of the suit the land in dispute was in the possession of the Maharajas of Betia and Hatwa, who were both defendants to the suit; that "during the pendency of the suit the Maharaja of Hatwa, defendant, admitting the petitioner's right and the justness of his claim, withdrew his possession and acknowledged the petitioner's right by a deed of compromise, dated 9th October, 1879;" that "the half of the land in dispute, regarding which the Maharaja of Hatwa, defendant, had acknowledged the petitioner's right and withdrawn his possession, was put in the possession of the Maharaja of Betia, defendant, by the Government, and the Board of Revenue decided that the settlement of the said half of the land should be made with the Maharaja of Betia." On these allegations the application went on to say:—"As this transfer of possession took place while the suit was pending, and it is necessary to amend the petition of plaint as to this portion of land to obtain the consequential relief, it is prayed by this petition under s. 372 of the Civil Procedure Code, that permission may be given to amend the petition of plaint under the provisions of the said section." The application was opposed on behalf of the Secretary of State, (one of the defendants), *inter alia*, on the ground that the compromise was the result of collusion between the parties thereto, and that it made no difference in the points at issue which had to be determined in the case. The Subordinate Judge held that the application could not be made under s. 372 of the Civil Procedure Code, and declining to amend the plaint, rejected the application on the 11th November, 1881.

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From this order the present appeal was preferred by the plaintiff, and the learned counsel who appeared in support of the appeal contended that, although the order appealed from was interlocutory, it was appealable under cl. (21) of s. 588, Civil Procedure Code. He further contended that the deed of compromise must be regarded as an "assignment, creation or devolution of an interest pending the suit," within the meaning of s. 372, Civil Procedure Code; and that, under the circumstances of the case, the lower Court should have acted under that section, the case being one in which the Court should have directed that the suit "be continued by or against the person to whom such interest has come, either in addition to or in substitution for the person from whom it has passed."

Mr. *Conlan* and *Lala Lalta Prasad*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Prasad*), the *Junior Government Pleader* (*Babu Dwarka Nath Banarji*), *Pandit Bishambhar Nath*, and *Babu Sital Prasad Chattarji*, for the respondents.

The judgment of the Court (TYRRELL, J., and MAHMOOD, J.,) was delivered by

MAHMOOD, J. (who, after stating the facts of the case as set out above, continued :)—In considering this case, we have had considerable difficulty in understanding the exact nature of the prayer contained in the plaintiff's application of the 8th November, 1881. That prayer does not specify the amendments for which permission was prayed. If it may be regarded as an application merely for amending the plaint, the order rejecting it is clearly not appealable. On the other hand, if we accept the interpretation which the learned counsel for the appellant seeks to place upon it, we are of opinion that the case does not fall under s. 372 of the Civil Procedure Code. The deed of compromise is an ordinary agreement whereby the parties thereto agree to adjust the matter in dispute between them, and to which effect can be given only in the decree to be passed in the case; and indeed such was the prayer in the deed of compromise itself. S. 372 occurs in Chapter XXI. of the Civil Procedure Code, which deals principally with incidental proceedings arising from "the death, marriage and insolvency of parties;" and it is intelligible

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that the Legislature, whilst providing for those incidents, should at the end of the Chapter make provision also for "other cases of assignment, creation or devolution of any interest pending the suit." But it is clear to us that a deed of compromise filed in the Court during the pendency of a suit cannot be regarded as an "assignment" within the meaning of s. 372. No "addition" or "substitution" of parties, as contemplated by that section, can be made in a case like the present, in which the entire contention of the plaintiff amounts to a request that his name should be substituted for that of one of the defendants who has joined the compromise. This shows the anomaly to which the contention for the appellant naturally leads. We have no hesitation in holding that the "cases of assignment, creation or devolution" contemplated by s. 372 are those in which "the person to whom such interest has come" must be arrayed on the same side in the suit as "the person from whom it has passed"—an interpretation which is in keeping with the contemplation of all the other sections of Chapter XXI.

Whatever the legal effect of the compromise in this case may be, that effect must be the subject of consideration in the final decision of the case. No effect can be given to it at this stage of the suit; and since we agree with the Subordinate Judge in holding that s. 372 has no application to this case, we dismiss the appeal with two sets of costs.

Appeal dismissed.

Before Mr. Justice Brodhurst and Mr. Justice Mahmood.

1882
August 29.

HOTI LAL (DECREE-HOLDER) v. HARDEO AND ANOTHER (JUDGMENT-DEBTORS).*

Execution of decree—Certificate for collection of debts—Act XXVII. of 1860—Application for execution by representative of deceased decree-holder—Objection to title—Order refusing to allow representative to take out execution until granted certificate—Appeal—Civil Procedure Code, s. 244.

On appeal from an order allowing an application by the legal representative of a deceased decree-holder for execution, the appellate Court, holding that the applicant must obtain a certificate under Act XXVII. of 1860 before he could take out execution of the decree, made an order directing that execution of the decree should be stayed until the applicant had obtained such certificate.

* Second Appeal No. 25 of 1882, from an order of L. B. Thorahill, Esq., Judge of Aligarh, dated the 11th April, 1882, reversing an order of Munshi Mata Khasab, Munsif of Aligarh, dated the 13th March, 1882.