

Before Mr. Justice Tyrrell and Mr. Justice Mahmood.

PRAGI LAL (DEFENDANT) *v.* FATEH CHAND (PLAINTIFF). *

Wrongful attachment of property—Assignment of right to sue for compensation.

The mere right to sue for compensation for the wrongful attachment of moveable property in execution of a decree is not transferable by sale.

Pragi Lal, defendant, held a decree against Mata Din, the deceased father of Jammu and Lallu, and in execution of his decree he attached a godown belonging to the judgment-debtors, which contained some cotton, on the 1st December 1880. The plaintiff, Fateh Chand, representing himself to be a broker in charge of the cotton for selling it, objected to the attachment of the cotton, which was released by the order of the Court executing the decree on the 16th December, 1880. In the meantime Parbati and Ishri, representing themselves to be the owners of a part of the cotton, executed a deed of sale on the 3rd December, 1880, conveying their share of the cotton to the plaintiff, together with the right to sue for such damages as might have been sustained by reason of the attachment above referred to. A similar deed of sale was executed on the 29th January, 1881, by Jodha, who represented himself to be the owner of the rest of the cotton. On the 31st January, 1881, the plaintiff sold the cotton; and on the 5th August, 1881, instituted the present suit, on the allegation that at the time of attachment, the market rate at which cotton sold was Rs. 18 per maund or Rs. 54 per *addha* (3 maunds); that by reason of the attachment the cotton could not be sold at that rate; that during the attachment the cotton sustained injuries, and being reduced in value was sold on the 31st January, 1881, at the reduced rate of Rs. 29-15-0 per *addha*; and that the entire quantity of the cotton was 26 *addhas*. On these allegations the plaintiff sued the defendant, Pragi Lal, for recovery of Rs. 625-10-0 on account of loss in cotton, Rs. 83-15-9 interest thereon at one per cent. per mensem, Re. 1-0-0 as brokerage, and Rs. 5 on account of rent; these sums forming a total of Rs. 716-9-9. The Court of first instance dismissed the suit on various grounds relating to the merits; which however need not be noticed here. The lower appellate Court, dissenting from the find-

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* Second Appeal No. 373 of 1882, from a decree of J. M. C. Steinbelt, Esq., Judge of Banda, dated the 27th January, 1882, modifying a decree of Kazi Wajeh-ul-lah Khan, Subordinate Judge of Banda, dated the 23rd August, 1881.

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ings of the Court of first instance, held that the plaintiff had acquired a valid title to the cotton ; that the defendant had failed to prove that the cotton belonged to his judgment-debtors ; that his action in attaching the cotton, and in opposing its release was " quite unjustifiable ;" that although it was not proved that the cotton had been damaged during the attachment, yet it had by the time of its release become what is technically called " old " and had consequently fallen in value ; that at the time of attachment the current price of cotton was about Rs. 18 per maund, and at the time of its release the cotton being " old " was worth only about Rs. 14 per maund. On these findings the lower appellate Court calculated the loss on cotton to amount to Rs. 308-0-0, and, besides this sum, held the plaintiff entitled to recover Rs. 5-4-0 the rent of the godown for the period of attachment, and thus decreed Rs. 313-4-0 plus interest thereon up to the date of the institution of the suit.

The present appeal was preferred by the defendant, whilst the plaintiff preferred objections to the decree of the lower appellate Court under s. 561 of the Civil Procedure Code.

Pandit *Ajudhia Nath* and Babu *Aprokash Chandar Mukarji*, for the appellants.

Munshi *Hanuman Prasad* and Mr. *Simeon*, for the respondent.

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

MAHMOOD, J. (who, after stating the facts of the case, as stated above, continued:)—We are of opinion that the lower appellate Court is wrong in holding that a mere right to sue for compensation for injury caused by a wrongful act can be made the subject of sale. The attachment of 1st December, 1880, if it caused any injury might have given a cause of action to the persons who owned the cotton at the time, and they might have sued the defendant for damages. But they could not convey such right of suing for compensation to the plaintiff. The attachment cannot be regarded as having injured the plaintiff, who was not, as he admits, proprietor of the cotton at the time. The property was in the house belonging to the defendant's judgment-debtors, and it was attached in circumstances which gave no reason to the defendant to believe that it

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).***

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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.