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In the result their Lordships will humbly advise His Majesty that the appeal be allowed, the decrees of the Chief Court set aside with costs and the decree of the Subordinate Judge restored. The respondents will pay the appellants' costs of the appeal.

Solicitors for appellants: *Barrow, Rogers and Nevill.*

Solicitors for respondents: *Watkins and Hunter.*

FULL BENCH.

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*Before Mr. Justice Wazir Hasan, Acting Chief Judge,
Mr. Justice Gokaran Nath Misra and Mr. Justice
Muhammad Raza.*

THAKUR JAI INNDAR BAHADUR SINGH (JUDGMENT-DEBTOR) APPELLANT v. MUSAMMAT BRIJ INNDAR KUAR (DECREE-HOLDER RESPONDENT).*

Civil Procedure Code (Act V of 1908), order XXI, rules 1 and 2 and section 51—Receiver appointed by court—Payment of money by judgment-debtor of money due under a decree to the receiver—Misappropriation by receiver of money paid by judgment-debtor and of property received by him for sale and payment to decree-holders—Judgment-debtor if absolved from liability for money and property paid to receiver—Loss due to receiver's misappropriation, to be borne by whom—Interpretation of statutes, rules of.

Where the judgment-debtor is proved to have paid money due from him under a decree passed by the court to the receiver appointed by the court for realizing sums of money and making payments to the decree-holder, and the receiver is found subsequently to have misappropriated the money, the judgment-debtor should be absolved from his liability and the loss should not fall upon him. The loss in such a case must fall on the judgment-creditor to whom it would be open to sue the receiver or to take such other remedy as he may be

*Execution of Decree Appeal No. 54 of 1928, against the decree of Babu Jotindra Mohan Basu, District Judge of Lucknow, dated the 4th of July, 1928.

advised to take but he cannot be allowed to receive the said money again from the judgment-debtor. Where certain property which comes in the hands of the receiver to be sold by him for the purpose of making payments awarded to the different decree-holders is misappropriated by him the loss must be borne rateably by all the decree-holders in proportion to the amounts of their decrees and must not fall upon one of them. *Orr v. Muthia Chetti* (1), and *Muthia Chetti v. Orr* (2), referred to.

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Per HASAN, A. C. J. :—It is a well accepted maxium of interpretation that an enactment includes all the incidents or consequences necessarily resulting from it. *West India Improvement Company v. The Attorney-General of Jamaica and Fraser* (3), referred to.

Order XXI, rule 1 of the Code of Civil Procedure must mean two things : (1) The mode in which a judgment-debtor must pay money under a decree and that he shall not pay in any other mode and (2) that if he has so paid he has discharged his liability under the decree. Therefore when money payable under a decree is paid by a judgment-debtor in accordance with the direction of the court which made the decree the act of payment must involve, to save itself from utter futility, the necessary consequence of freedom of the judgment-debtor from his liability under the decree.

Messrs. *Ali Zahir, Sulig Ram and Narain Lal*, for the appellants.

Mr. *J. Jackson*, for the respondent.

MISRA, J. :—The question which has been referred to the Full Bench for decision is as follows :—

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“Where the judgment-debtor is proved to have paid money, due from him, under a decree passed by the court, to the receiver appointed by the court for realizing certain sums of money and making payments to the decree-holder or decree-holders, or other money or property is proved to have come to his hands and the receiver is found to

(1) (1894) I.L.R., 17 Mad., 501. (2) (1897) I.L.R., 20 Mad., 224.
(3) (1894) I.L.R., A.C., 243.

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have misappropriated the money and the the property, on whom should the loss fall? Should the loss fall on the judgment debtor or on the judgment-creditor?"

The facts of the case are sufficiently stated in the order of reference. For our purpose it is only necessary to state that in an administration suit brought by the respondent Musammat Brij Indra Kunwar, it was decided that she, along with certain other persons, was entitled to a particular sum as annuity as provided in the will of her father Thakur Rajendra Bahadur Singh and a decree for the amount due to her was passed. Certain property, moveable and immoveable, was held liable for the payment of these annuities. The moveable property consisted of cash, Government securities and certain debts. The immoveable property consisted of certain villages situate in the Kheri district. The first court directed the sale of the Government securities as well as of the immoveable property and also the realization of the debts, the proceeds whereof was to be spent in paying the annuities both past and future. It also appointed a Receiver authorising him to realize the debts and to sell the properties if necessary and to pay therefrom to the annuitants their past arrears as well as the sums that were to accrue due in future.

On appeal the court of the late Judicial Commissioner modified the decree only to this extent that it held that if the defendant judgment-debtor deposited a certain amount of money the immoveable property should not be sold. It calculated the amount of money which the judgment-debtor should deposit in order to prevent the sale of the immoveable property. We may also indicate that the annuitants were only to enjoy the amounts of their annuities for their lives, and the property moveable and immoveable which was charged with the payment of the said annuities was to go to the

judgment-debtor to the extent of what remained available after the payment of the said annuities.

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The receiver appointed by the first court did not furnish any security. He, however, realized certain debts and the Government securities were also handed over to him. Besides, the judgment-debtor paid to him certain sums of money which he was liable to pay to the various annuitants of whom the plaintiff-respondent was one. The receiver has misappropriated the securities and has also embezzled the sums of money paid to him by the judgment-debtor as well as realized by him on account of debts. He has absconded and no trace of him can now be found.

The question which has now been referred to us is regarding the sums paid to the receiver by the judgment-debtor or realized by him, and the securities that came into his hands and which he has either embezzled or misappropriated.

As to the sums of money paid to the receiver by the judgment-debtor or realized by him I am of opinion that the judgment-debtor must be considered as absolved from the liability of the payment of the said sum and I proceed to give my reasons for arriving at this conclusion.

Under order XXI, rule 1 it is provided that all money payable under a decree shall be paid as follows namely :—

- (a) into the court whose duty it is to execute the decree; or
- (b) out of court to the decree-holder; or
- (c) otherwise as the court which made the decree directs.

The rule further provides that where any payment is made under clause (a) of sub-rule 1 notice of such payment shall be given to the decree-holder. It appears to me to be clear from the above provisions that where a judgment-debtor pays money either into the court whose duty it is to execute the decree or in

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a manner directed by the court, the payment is considered to be as good a payment as one made by the judgment-debtor out of court to the decree-holder himself. Where the payment is made in accordance with the direction of the court it is not necessary to give any notice of such payment to the decree-holder. The judgment-debtor if he makes such payment is absolved from his liability. To illustrate my meaning I would take the case where a warrant of attachment of the property of a judgment-debtor is issued and handed over for execution to the bailiff of the court under the provisions of order XXI, rule 30 of the Code of Civil Procedure or where a warrant for the arrest of the judgment-debtor is similarly handed over to the bailiff for execution under the provisions of order XXI, rule 38 of the Code. The form of the warrant of attachment will be found on No. 8 of Appendix E attached to the Code of Civil Procedure and the form of the warrant for arrest in execution will be found on No. 13 of the same Appendix. It will appear from those two forms of warrants that the execution is deemed complete when the amount of money entered in the warrant is paid by the judgment-debtor to the bailiff of the court. On the payment of the said sum by the judgment-debtor, the bailiff is to return the warrant with a report that it has been carried into effect. If then the money paid by the judgment-debtor to the bailiff is embezzled by the latter the judgment-debtor cannot be considered to be liable to pay the said sum a second time. The bailiff of the court is an officer of the court and the payment to him is in accordance with the direction of the court entered in the warrant. The conclusion therefore to which I have arrived is that if the money is paid by the judgment-debtor either into the hands of the decree-holder or to an officer of the court in accordance with the directions of the court, he must be deemed to be absolved from all future liability of making another payment.

It is clear from the facts stated in the order of reference that the court of the Second Additional District Judge of Lucknow gave to the receiver appointed in this case directions to realize the money both from the judgment-debtor and from other sources mentioned in the judgment. If the judgment-debtor therefore made payments to the receiver his payments will be considered to have been made to an officer of the court in accordance with the directions of the court and the payments so made must be considered to be good so far as he (the judgment-debtor) is concerned.

As remarked in the order of reference there are not many cases on the subject. The matter seems to have come up before the Madras High Court in a case reported in *Orr v. Muthia Chetti* (1), and in an appeal from that very decision which will be found reported in *Muthia Chetti v. Orr* (2). This was a case in which a receiver had been appointed at the instance of the judgment-creditor under section 503 of the Code of Civil Procedure, 1882, for the purpose of realizing money due to the judgment-debtor from certain tenants. The money was collected by the receiver but was subsequently misappropriated by him. The question for decision was whether the collection of the amount by the receiver had discharged the judgment-debtor from his liability. Mr. Justice MUTTUSAMI AYYAR held that the receiver though appointed at the instance of the decree-holder could not be considered to be his agent but must be deemed to be a custodian of the property on behalf of the parties to the case, and such being the case if there occurred a loss from the default of the receiver, the estate must bear the loss. In the appellate court the case was heard by a Bench of two Judges consisting of Mr. Justice SHEPARD and Mr. Justice DAVIES. Mr. Justice SHEPARD took the same view as had been taken by Mr. Justice MUTTUSAMI AYYAR. Mr. Justice DAVIES

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however took a different view. His opinion was that when a judgment-debtor paid the money into court or otherwise as directed by the court the judgment-debtor must be considered as having discharged the decretal debt. He was of opinion that a receiver ought to be considered as an officer of the court and any payment made to such officer should be treated as effectual as a payment made directly into court. I am in entire agreement with the opinion of Mr. Justice DAVIES and the analysis of order XXI, rule 1 given in the earlier portion of this judgment satisfies me that the view taken by Mr. Justice DAVIES is correct.

The same conclusion appears to me to be deducible if we look at the case from another aspect. Reading rule 1 and rule 2 of order XXI together it would appear that where a payment is made out of court to a decree-holder it is necessary that such payment should be certified to the court in order that the judgment-debtor may be exonerated from the liability of making the payment again. The payment may be certified either on the application of the judgment-debtor or that of the decree-holder. No such certification is provided for in the case where the money is paid into court or where the money is paid according to the direction of the court. Where money is paid into court under clause (a) of sub-rule (1) or according to the direction of the court under clause (c) of sub-rule (1) the obvious reason for not requiring certification in these cases is that the payment is considered to be effective. I would therefore answer the first portion of the reference in this way that where the judgment-debtor is proved to have paid money due from him under a decree passed by the court to the receiver appointed by the court for realizing sums of money and making payments to the decree-holder, and the receiver is found subsequently to have mis-appropriated the

money, the judgment-debtor should be absolved from his liability and the loss should not fall upon him. The loss in such a case must fall on the judgment-creditor to whom it would be open to sue the receiver or to take such other remedy as he may be advised to take but he can not be allowed to recover the said money again from the judgment-debtor.

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As to the property which is proved to have come to the hands of the receiver and which he has misappropriated, my answer would similarly be that if the property which came into the hands of the receiver and was to be sold by him for the purpose of making payments awarded to the different decree-holders, the loss must be borne rateably by all the decree-holders in proportion to the amount of their decrees. The loss must fall on all the judgment-creditors and not upon one of them. I am clear in my mind that the Government securities which were to go into the hands of the receiver and which actually did come into his hands but were subsequently misappropriated by him, were directed by the court to be sold and the sale-proceeds were to be appropriated in making payments to the different annuitants including the plaintiff-respondent in whose favour the decrees had been passed in the administration suit.

The judgment-debtor for the reason stated above cannot be made to suffer the loss since the property which had to come into the hands of the receiver did actually reach his hands. My answer to the second part of the reference therefore is that in such a case the loss should not fall on the judgment-debtor but should fall on all the judgment-creditors rateably in proportion to the amount of their decrees.

With these two answers I would return the record to the Bench concerned.

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HASAN, A. C. J. :—This is a reference to the Full Bench for decision of the following question :—

“Where the judgment-debtor is proved to have paid money, due from him under a decree passed by the court, to the receiver appointed by the court for realizing certain sums of money and making payments to the decree-holder or decree-holders, or other money or property is proved to have come to his hands and the receiver is found to have mis-appropriated the money and the property, on whom should the loss fall? Should the loss fall on the judgment-debtor or on the judgment-creditor?”

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The question stated above clearly assumes the fact that a judgment-debtor has in satisfaction of a decree and a claim against him paid money or delivered property but that he has done so not directly to the decree-holder but to a receiver appointed by the court. On that fact it must be held that the act of the judgment-debtor is accepted as referable only to his liability under the decree and to the other claim of the same decree-holder and to no other liability. It is admitted that the judgment-debtor's discharge of the liability under the decree or the claim would have been complete had he paid the money or delivered the property to the decree-holder. The controversy therefore centres round the question as to whether the payment of money or the delivery of property not to the decree-holder but to the receiver gives in law the same result or not. This brings me at once to the consideration of the circumstances in which and the objects for which the receiver was appointed by court in this particular case. According to the order of reference the receiver was appointed by the same court which had passed the decree and which was seized with a suit for

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the administration of the judgment-debtor's assets and was appointed for the purpose of realizing debts that might be due to the estate of the judgment-debtor and also to sell his properties, if necessary, with directions as to the ultimate destination of the proceeds and that was to pay the decree-holder in satisfaction of the decree and also in satisfaction of a future claim of annuity. If such were the directions and the object of the court in making the appointment of the receiver it follows that he had the authority of the court to receive the judgment-debtor's money and property in satisfaction of the decree and the claim of the annuitants. That the court could in the exercise of its powers with which it is invested by law prescribe a mode for satisfaction of the decree by the judgment-debtor is beyond doubt—[See clause (c), sub-rule 1 of rule 1, order XXI, of the Code of Civil Procedure]. In this particular case the mode prescribed was payment to the receiver. I hold therefore that when the judgment-debtor paid money to the receiver with the object of satisfying the decree or the claim against him and also delivered property to him for the same object his act in doing so was an act in accordance with the directions of the court and therefore valid. The same conclusion is reached by considering the effect of the provisions of section 51 of the Code of Civil Procedure. Those provisions authorize the court to order execution of the decree :—

- (a) by delivery of any property specifically decreed,
- (b)
- (c)
- (d) by appointing a receiver,
- (e) in such other manner as the nature of the relief granted may require.

In arriving at the result mentioned above I have not felt much difficulty but my difficulty arises now.

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Rule 1 of order XXI of the Code of Civil Procedure says that all money payable under a decree shall be paid in any of the three ways mentioned in clauses (a), (b) and (c) of sub-rule (1) respectively. The rule does not proceed to state that if money is paid in accordance with any of the three modes the decree shall stand satisfied and the judgment-debtor absolved of his liability under the decree in its entirety or proportionately as the case may be. But if this is not so expressed in words can it be said that the same is not intended by necessary implication? I think not. In my opinion that rule must mean two things: (1). The mode in which a judgment-debtor must pay money under a decree and that he shall not pay in any other mode and (2) that if he has so paid he has discharged his liability under the decree.

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Perhaps the implication is clearer in cases where the court is to certify payment or adjustment of a decree and the certificate has been recorded. On the circumstances it must be held that the present case is not a case of that nature. The payment or an act done in accordance with the rule will become wholly illusory unless it be held that the rule impliedly includes all the incidents or consequences strictly resulting from it. When money payable under a decree is paid by a judgment-debtor in accordance with the direction of the court which made the decree the act of payment must involve, to save itself from utter futility, the necessary consequence of freedom of the judgment-debtor from his liability under the decree. It is a well accepted maxim of interpretation that an enactment includes all the incidents or consequences necessarily resulting from it. An illustration of this maxim will be found in the case of *West India Improvement Company v. The Attorney-General of Jamaica and Fraser* (1). On these grounds my answer

(1) (1894) L.R., A.C. 243.

to the question is the same as given by my learned brother MISRA, J.,

RAZA, J.:—I am in entire agreement with the opinion expressed by my learned brother Mr. Justice GOKARAN NATH MISRA. In my opinion also the receiver should be considered to be an officer of the court and any payments made to such officer should be treated as effectual as payments made directly into court. I see no reason why should the judgment-debtor suffer when he paid the money into court or out of the court to the decree-holder or otherwise as directed by the court. I would also answer the question referred to the Full Bench for decision, in the manner in which it has been answered by my learned brother Mr. Justice GOKARAN NATH MISRA.

BY THE COURT:—The answer to the question is that the loss should fall on the judgment-creditor.

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APPELLATE CRIMINAL.

Before Mr. Justice Muhammad Raza and Mr. Justice
A. G. P. Pullan.

TAULE (APPELLANT) v. KING-EMPEROR
(COMPLAINANT-RESPONDENT).*

Evidence Act (I of 1872), section 24—Zilladar of a big estate is a person in authority within the meaning of section 24 of the Evidence Act—Confession made to a zilladar of a big estate by a person residing in a village of that estate, admissibility of—Confession of guilt to villagers, weight to be attached to.

Held, that a zilladar serving under a big estate is a person of great importance in the villages which belong to that estate and has great authority over those villagers and is therefore a person in authority within the meaning of section 24 of the Evidence Act. *Emperor v. Har Piari* (1), relied on.

Where a confession was made to a zilladar of a big estate by a resident of one of the villages belonging to that estate

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March 3.

*Criminal Appeal No. 65 of 1929, against the order of Pandit Bishambhar Nath Misra, Additional Sessions Judge of Kheri, dated the 6th of February, 1929.

(3) (1926) I.L.R., 45 All., 57.