

1937

BANSIDHAR
& SONS
v.
THE
COMMISSIONER OF
INCOME-TAX,
BURMA.

DUNKLEY, J.

of his discretion the Commissioner of Income-tax declined to hear certain evidence.

This application therefore fails and is dismissed with costs ten gold mohurs.

ROBERTS, C.J.—I agree.

LETTERS PATENT APPEAL.

*Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and
Mr. Justice Dunkley.*

1937

Nov. 11.

U PO HLA AND ANOTHER

v.

KO PO SANT AND ANOTHER.*

Landlord and tenant, agreement between—Landlord's charge on crops for rent—Execution-creditor of tenant—Attachment and sale of crops—Equities binding on property—Knowledge of the creditor—Title of judgment-creditor.

Where there is an agreement between the landlord and his tenant that the crops grown upon the land should be charged with payment of rent an execution-creditor of the tenant is bound by this agreement, and it is immaterial whether he has knowledge of it or not. A judgment-creditor can in execution attach and bring to sale only the right, title and interest of his judgment-debtor in the property he attaches and is bound by all the equities which were binding on the property in the hands of the judgment-debtor. The creditor cannot have a better title than his judgment-debtor and therefore cannot override the landlord's charge on the crops for his rent.

A.R.M.A.L.A. Veeappa Chettyar v. R.M.M.K. Mutukumaru Pillay, L.P. Ap. 8 of 1931, H.C. Ran. ; S.M.R.M. Firm v. P.L.A.R.M. Firm, L.P. Ap. 7 of 1935, H.C. Ran., followed.

Tun Tin for the appellant.

Rahman for the respondent.

ROBERTS, C.J.—This appeal must be allowed and we must set aside the judgment of Mr. Justice Spargo and of the Assistant District Judge and restore the decree

* Letters Patent Appeal No. 4 of 1937 arising out of Special Civil Second Appeal No. 351 of 1936 of this Court.

granted by the Township Judge of Wakema with costs here and in the Courts below.

The Township Court of Wakema dealt with this case clearly and fully except for an unfortunate clerical error in the judgment which it is easy to explain. The decree-holders in this case were landlords who had a decree for rent, and Mr. Rahman who appears for them says that they are as much entitled to rent from the tenants as the appellants are. The appellants are other landlords and they are also entitled to their rent, and they had a contract with their tenants that the paddy grown upon the land which they leased to them should be charged with payment of rent due to them before the tenants could reduce it into their own possession. It is quite clear from the decided authorities that a decree-holder, who is attaching property under the process of execution, cannot seize property which his judgment debtor holds subject to restrictions, and ignore those restrictions: he cannot, in other words, obtain a better title than the judgment-debtor has got. That has been made clear in a number of cases and is so elementary a proposition of law that I need not pause for authorities, but the two cases to which the learned High Court Judge has referred in his note granting a certificate of appeal are sufficient to establish the proposition in these Courts, and we follow them without hesitation.*

The matter is really a simple one. It is not complicated by any question of agricultural custom, and it having been admitted that the respondents attached the whole of the paddy on the appellants' land without leaving any for the appellants to take in satisfaction of the charge which they held upon it (that was alleged in the pleadings, and admitted by there

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* These two cases are cited in the headnote—*Ed.*

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being no denial in the paragraph of the written statement corresponding to the paragraph in the plaint in which it was alleged), that was an end of the matter : they did that, and they had no right to do it because of the equities subject to which the judgment-debtors held the paddy.

As I say therefore, this appeal must be allowed. Advocate's fee in this Court six gold mohurs.

DUNKLEY, J.—In the Township Court and on appeal to the Assistant District Court, and again on second appeal to this High Court, this case has been throughout fought on the question whether the present respondents (who were defendants in the Township Court) had knowledge of the terms of the agreement between the appellants (who were plaintiffs in the Township Court) and their tenant. The question of knowledge was entirely irrelevant. A judgment-creditor can in execution attach and bring to sale only the right, title and interest of his judgment-debtor in the property against which process in execution is issued at his instance. He obtains by the warrant of attachment the right to bring to sale the property of his judgment-debtor subject to all the equities which were binding on that property in the hands of his judgment-debtor. He is just as much bound by those equities as was his judgment-debtor, and it matters not whether he has knowledge thereof or not. Consequently the respondents, in attaching and bringing to sale the crop grown by their judgment-debtor on the land of the appellants, are bound by the terms of the tenancy agreement between their judgment-debtor and the appellants, whether they have knowledge thereof or not. All that was decided in the case or *Maung Po Lwin v. Maung Sein Han* (1) was that a purchaser of the crop who purchases

for value in good faith without knowledge of the terms of the tenancy agreement is not bound by its terms, but is bound if he purchases with such knowledge. With the greatest respect, I am doubtful whether a purchaser for good consideration is bound by the agreement between the tenant and his landlord in any event, but that point does not arise in the present case, and the correctness of the decision in *Maung Po Lwin's* case (1) must be left for future consideration when the point arises. The position of an attaching judgment-creditor is entirely different ; he is always bound by the terms of the agreement between his judgment-debtor and the latter's landlord, whether he has knowledge thereof or not. I therefore agree that this appeal must be allowed, with costs throughout.

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CRIMINAL REVISION.

Before Mr. Justice Baguley.

MAUNG BA AND OTHERS v. THE KING.*

1937
Nov. 15

Assault—Conviction for assaulting public servant—Appellate Court's finding—Person assaulted not a public servant—Alteration of conviction—Penal Code, ss. 352, 353.

Where an accused has been convicted under s. 353 of the Penal Code for assaulting a person whom the magistrate thought to be a public servant and the appellate Court finds that he was not a public servant there is no bar to the conviction being altered to one under s. 352.

In the matter of Akbar Momin, 6 C.W.N. 202, considered.

K. C. Sanyal for the applicant.

BAGULEY, J.—I have taken the facts as given by the lower Courts. I see no reason for interference with these findings of fact in revision.

(1) (1929) I.L.R. 7 Ran. 100.

* Criminal Revision No. 517B of 1937 from the order of the Sessions Judge of Sagaing in Criminal Appeal No. 177 of 1937.