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March, 1890 (No. 260 of 1888) has been adjusted or otherwise satisfied. Assuming it to be still operative, we think that the decree dismissing this suit cannot be supported on the ground that the plaintiffs have withdrawn their execution darghāst for the present.

The defendant No. 1 has obtained an order releasing the four-annas share in the vatan from attachment. That order operates as a decree in favour of the defendants unless set aside by suit. The plaintiffs are permitted by section 283 of the Civil Procedure Code (Act XIV of 1882) to file a suit within a year to set that order aside and to have it declared that the four-annas share or some part of it is liable to attachment. A temporary cessation of the execution proceedings by the plaintiffs does not deprive them of the right to continue their suit. If they continue and succeed in it, they can then renew the execution proceedings and re-attach the interest (if any) which they shall have been declared in the suit entitled to attach. If they are not allowed to maintain this suit, the order removing the attachment will be an absolute bar to their ever again attaching the property—*Sardhāri Lāl v. Ambika Pershād*⁽¹⁾.

Decree reversed and suit remanded for disposal on the merits. Costs to be costs in the cause.

Decree reversed.

(1) I. L. R., 15 Cal., p. 521.

APPELLATE CIVIL.

Before the Honourable Chief Justice Furrar and Mr. Justice Parsons.

RAGHO BIN BHAVA'NA NHA'VI BY HIS ASSIGNEE SHITA' RA'M
BHIKA'JI BARVE, PLAINTIFF, v. NA' RA'YAN, DEFENDANT.*

*Transfer of Property Act (IV of 1882), Sec. 132—36 and 37 Viet., C. 66, Sec. 25
—Assignment of debt—Notice to debtor—Suit by assignee—Service of the writ.*

Under section 132 of the Transfer of Property Act (IV of 1882) the assignee of a debt is under no obligation to give notice of the assignment to the debtor. All that is required is that the debtor shall become aware of it, and it is sufficient if he becomes aware of it on being served with a writ in a suit by the assignee.

* Civil Reference, No. 16 of 1895.

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Lalla Jugdeo Sahai v. Brij Behari Lal(1), *Subbammal v. Venkatarāma*(2) and *Kalka Prasad v. Chandan Singh*(3) followed.

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REFERENCE from Rāo Sāheb G. D. Deshmukh, Subordinate Judge of Chiplūn in the Ratnāgiri District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The reference was as follows :—

“The defendant on the 22nd of April, 1893, passed a money-bond for Rs. 24-4-0 to one Rāgho bin Bhavāna Nhāvi, the debt with interest at four pies per rupee per month being made payable one year after.

“The obligee of the bond, Rāgho bin Bhavāna Nhāvi, thereupon on the 22nd of June, 1895, assigned to the plaintiff by a verbal agreement his right to recover the said debt of Rs. 24-4-0 and interest Rs. 13-6-2 from the defendant.

“The plaintiff, therefore, has brought the present suit as assignee of the debt to recover the principal Rs. 24-4-0 and interest Rs. 13-6-2 from the defendant.”

The suit being a Small Cause suit, in which any order passed by the Subordinate Judge would be final, he referred the following question on which he entertained doubt :—

“Whether a notice to the debtor of such transfer is necessary as contemplated by sections 131 and 132 of the Transfer of Property Act (IV of 1882) before the debt can be enforced by a suit, it having been proved that the debtor is not a party to or otherwise aware of such transfer?”

The opinion of the Subordinate Judge was in the affirmative.

Sitanāth G. Ajinkya (*amicus curiæ*) appeared for the plaintiff :—

We submit that a separate notice is not necessary. The mere filing of the suit is a sufficient notice of the assignment. Section 131 of the Transfer of Property Act provides that the debtor should be made aware of the assignment. It does not lay down that a notice should be given in any particular form or at any particular time. Further, under section 132 it was not necessary for us to give notice, our assignor ought to have given it, and if

(1) I. L. R., 12 Cal., 565.

(2) I. L. R., 10 Mad., 289.

(3) I. L. R., 10 All., 20.

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he failed to do so, his failure should not operate to our prejudice—*Walker v. Bradford Old Bank*⁽¹⁾; *Lála Jugdeo Sahai v. Brij Behári Lál*⁽²⁾; *Subbammal v. Venkataráma*⁽³⁾; *Kalka Prasád v. Chandan Singh*⁽⁴⁾.

Vishnu K. Bhatárvlekar (*amicus curiæ*) appeared for the defendant:—The cases relied on show that no previous notice of the transfer is necessary, but the language of section 131 of the Act is quite explicit. It requires that express notice of the transfer should be given. The mere filing of the suit or the service of summons is not such a notice. In cases of ejection express notice is required to be given to the tenant by the landlord. In such cases express notice has been held to mean notice before suit. Therefore by analogy we submit that when a debt is transferred, express notice—that is, notice before suit—of the transfer should be given to the debtor.

FARRAN, C. J.:—It is clear that the assignment when executed creates a right in the assignee which the assignor is not entitled to defeat. Such assignment has, however, no operation against the debtor until he has become aware of it or has had express notice of it given to him in the manner required by the Act. Until then he can deal safely with the original creditor. The assignment which he does not know of, cannot affect him. Before the passing of the Transfer of Property Act, it was the assignee upon whom it was incumbent for his own protection to give notice of his assignment to the debtor. There was no particular reason why the assignor should give it. We cannot help thinking that there has been a slip made in section 132 in throwing upon the person making the transfer the obligation of giving express notice to the debtor. The English Act 36 and 37 Vict. c. 66, sec. 25, only requires that express notice in writing shall be given. It does not enact who is to give it. It may be given either by assignee or assignor. It may even be given after the death of the assignor—*Walker v. Bradford Old Bank*⁽¹⁾. But however this may be (and the attention of the Legislature may well be directed to the point), we must construe the Act as it stands. No provision is made in it for the assignee giving

(1) 12 Q. B. D., 511.

(3) I. L. R., 10 Mag., 289.

(2) I. L. R., 12 Cal., 505.

(4) I. L. R., 10 All., 20.

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notice in any particular way. All that is required is that the debtor shall become aware of the transfer. When he become aware of it, it is binding upon him. Accordingly, if the assignee the moment before suit makes the debtor aware of the transfer, the latter must give effect to it. It follows that when the debtor is by the writ made aware of the transfer, it becomes binding on him. There is doubtless this difficulty that at the moment when the suit is brought, the cause of action of the assignee against the debtor may be said not to be actually complete: that it is the service of the writ itself which completes it. It would, however, we think, be taking too technical a view of the position of the parties to give effect to this objection. The plaintiff's right to the debt is complete at the date of suit. We think that we ought to follow the rulings of *Lála Jugdeo Sahai v. Brij Behári Lál*⁽¹⁾, which has itself been followed by the other High Courts—*Subbammal v. Venkataráma*⁽²⁾ and *Kalka Prasád v. Chandan Singh*⁽³⁾.

Order accordingly.

(1) I. L. R., 12 Cal., 505.

(2) I. L. R., 10 Mad., 289.

(3) I. L. R., 10 All., 20.

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

MOHAN (PLAINTIFF) v. TUKA'RA'M AND ANOTHER (DEFENDANTS).*

1895.

September 30.

Dekkhan Agriculturists' Relief Act (Act XVII of 1879), Secs. 3, 12, 47 and 74—Arbitration—Award—Civil Procedure Code (Act XIV of 1882), Secs. 518—521, 522—A private award to which agriculturist debtors are parties—Filing of the award in Court.

A Civil Court can file a private award to which agriculturist debtors are parties without adjusting the accounts under the Dekkhan Agriculturists' Relief Act (Bombay Act XVII of 1879).

Gangádhār v. Mahádu⁽¹⁾ followed.

REFERENCE by Khán Sáheb Ezra Reuben, Subordinate Judge of Kopargaon in the Ahmednagar District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

* Civil Reference, No. 17 of 1895.

(1) I. L. R., 8 Bom., 70.