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and we follow it. We can see no practical difference between the power to create a debt and the power to acknowledge a liability for the debt so created. Ordinarily the power to do the one impliedly involves the power to do other. No greater authorisation is needed for the one act than for the other. If, then, by Hindu law the manager of the family has under certain conditions authority to contract debts for which the family is liable, he has by the same law authority to acknowledge the liability of the family for the debts which he has properly contracted. This latter authority is, we think, entitled equally with the former to be considered a part of the functions of that member who is managing on behalf of the family. The exercise of such an authority must often be necessary and may be very beneficial to the family. In our opinion the manager must ordinarily be held to be an agent duly authorised in this behalf within the meaning of section 19 of the Limitation Act, 1877. Evidence may of course be adduced in each case of facts or circumstances to show the contrary, but there is no such evidence in this case, the appellants having rested their defence upon the allegation that the family was not joint when the acknowledgment in question was made. We confirm the decree with costs.

*Decree confirmed.*

## ORIGINAL CIVIL.

*Before Mr. Justice Starling, and before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.*

### *IN RE* PREMJI TRIKUMDA'S.*

1893. *March* 11 *and* 23.

*Civil Procedure Code (XIV of 1882), Sec. 267—Practice—High Court Rule No. 183—Order made by a Judge in chambers on client to pay taxed costs of his attorney—Right of attorney to execute such order as a decree—Application under Section 622 of Civil Procedure Code (XIV of 1882) to review such order.*

An order obtained from a Judge in chambers by an attorney against his client for the payment of costs is a decree or order, to the execution of which the provisions of Chapter XIX of the Civil Procedure Code (XIV of 1882) apply.

* In the matter of Suits, Nos. 657 of 1869; 421 of 1883; 374 of 1890; 613 of 1890, 461 of 1891 and 580 of 1891.

Section 267 of the Civil Procedure Code is applicable to all the property of the judgment-debtor out of which the decree can be satisfied either by delivery in obedience to the decree or by sale.

The words "liable to be seized" contained in section 267 of the Civil Procedure Code are words of description pointing out the kind of property in respect of which an enquiry can be held, *viz.* any property which is attachable under the decree.

Property of a judgment-debtor which he has mortgaged is *primâ facie* liable to be seized in execution of a decree against him, and the fact that he has mortgaged it will not prevent its being attached and sold in execution of the decree subject to the mortgage-debt.

A person may be examined, under section 267, in respect of property which is *primâ facie* the property of the judgment-debtor, although such person may allege that he is a mortgagee in possession of the attached property.

Section 622 of the Civil Procedure Code (XIV of 1882) does not apply to a case where the order of which review is sought, is made by the High Court. The Court referred to in section 622 is a Court other than the High Court.

Summons in chambers.

On the 26th January, 1893, Messrs. Bháishankar and Kángá, attorneys, took out a summons calling on Premji Trikumdás to show cause why he should not be ordered to pay to them a sum of Rs. 6,256-2-1, being the balance of taxed costs due to them in respect of certain suits in which they had acted as his attorneys. The summons was obtained under Rule 183 of the High Court Rules, which is as follows :—

"An attorney, when he has taxed his bill of costs against his client, may obtain an order in chambers for payment of the sum allowed on taxation, and such order may be executed under Chapter XIX of the Code of Civil Procedure."

On the 6th February, 1893, the above summons was made absolute, and Premji Trikumdás was ordered to pay Messrs. Bháishankar and Kángá the said sum of Rs. 6,256-2-1.

On the 9th February, 1893, Mr. Bháishankar Nánábhoy, the senior partner of the firm of Bháishankar and Kángá, filed an affidavit, in which he alleged that the said Premji Trikumdás was concealing himself, and keeping out of the way, in order to delay and defeat the execution of the above order passed against him. He further alleged that Premji Trikumdás had mortgaged certain immoveable property to his wife, Premábái, and had pledged valu-

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able ornaments to a Márwári, Jáná Ookhá, and that these three persons, *viz.* Premji Trikumdás, Premábái, and Jáná Ookhá, were able to give information as to property liable to be attached in execution of the said order.

Upon this affidavit an order was obtained on the 9th February, 1893, under section 267 of the Civil Procedure Code (XIV of 1882), requiring Premji Trikumdás, his wife Premábái, and Jáná Ookhá to attend before the Judge in chambers to be examined in respect of any property in their possession liable to be seized in satisfaction of the order of the 6th February, 1893, and to answer all such questions as might be put to them, &c., and requiring the said Premábái to produce all deeds and documents relating to any of the immoveable property mortgaged, or alleged to have been mortgaged, with her by the said Premji Trikumdás, &c.

Premábái thereupon filed an affidavit in which she stated that on the 3rd December, 1891, Premji Trikumdás had mortgaged certain immoveable property to her, and that having failed to pay her the interest due on the mortgage he had given her possession of the property on the 21st October, 1892, since which date she had continued in possession; and that on the 9th February Messrs. Bháishankar and Kángá had attached the said property under an order of 6th February, 1893. On the allegations contained in this affidavit she, on the 17th February, 1893, obtained a summons calling on Messrs. Bháishankar and Kángá to show cause why the above order of the 9th February, 1893, should not be set aside.

The summons now came on for hearing.

*Macpherson* for Messrs. Bháishankar and Kángá showed cause.

*Jardine* for Premábái in support of the summons.

The following authorities were referred to:—*Bhugobat Singh* v. *Rám Adhin Singh*[1]; *Mahárájah Rájendro Kishore Singh Bahádoor* v. *Hyabul Singh*[2]; *Kássiráv* v. *Vithaldás*[3]; Civil Procedure Code (XIV of 1882), sections 267, 647—649.

13*th March*, 1893. Starling, J.:—In this matter Mr. Bháishankar, on having obtained an order for payment of costs in a number

(1) 22 W. R., 330, Civ. Rul. (2) 17 W. R., 379, Civ. Rul.
(3) 10 Bom. H. C. Rep., 100.

of suits against his client Premji Trikumdás, attached certain property of which Premji was the owner, but which it was alleged he had mortgaged to his wife, Premábái, and of which he subsequently put her in possession.

On the 9th February, 1893, Mr. Bháishankar obtained an *ex parte* order from me under section 267 of the Civil Procedure Code, directing Premábái to appear and be examined. On the 17th February, 1893, Messrs. Bicknell, Merwánji and Motilál on behalf of Premábái obtained a summons from me calling upon Mr. Bháishankar to show cause why that order should not be set aside.

The grounds on which the order was sought to be set aside were that Mr. Bháishankar was not a decree-holder; that the section only applies to property which, under the decree, had to be given up in specie; and that, if it did apply to property which could be attached and sold in execution of a decree, then that the property in question was not "liable to attachment, as Premábái was a mortgagee in possession, and that this property was not liable to be seized," as it had already been attached.

Section 267 provides that "the Court may, . . . on the application of a decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, &c." Now, the High Court Rule No. 183 provides that "an attorney when he has taxed his bill may obtain an order in chambers for payment of the sum allowed in taxation, and such order may be executed under Chapter XIX of the Code of Civil Procedure." Section 647 of the Civil Procedure Code provides that 'the procedure prescribed in the Code shall be followed in all proceedings in any Court of civil jurisdiction other than suits and appeals;' and section 649 provides that "the rules contained in Chapter XIX shall apply to the execution of any judicial process for the arrest of a person or the sale of property or payment of money, which may be desired or ordered by a civil Court in any civil proceeding."

Taking all these provisions together I must hold that an order obtained by an attorney against his client for the payment of costs is a decree or an order to the execution of which the provisions of Chapter XIX of the Code apply; and as section 267 is

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a portion of that chapter, its provisions are also applicable to proceedings taken in the execution of such an order. Then, is property, which is desired to be attached in execution of a money decree, "property liable to be seized in execution of a decree"? I think it is. The words are not "property ordered to be delivered under or in execution of a decree" which might limit the powers of the Court to the ascertaining what the property was to which the decree referred, but "property liable to be seized in *satisfaction* of a decree," and, in my opinion, the word "satisfaction" causes the section to be applicable to all the property of the judgment-debtor out of which the decree can be satisfied, either by delivery in obedience to the decree, or by sale.

I am further of opinion that the words "liable to be seized" do not point to any particular period of time at which the enquiries may be made, so as to confine the operation of the section to a period anterior to the issue of process, but are words of description pointing out the kind of property in respect of which an enquiry can be held, *viz.* any property which is attachable under the decree. The only point now to be determined is whether the allegation by Premábái, that she is a mortgagee in possession, prevents the property being "property liable to be seized." The property in question is admittedly the property of the judgment-debtor, and, therefore, *primâ facie*, is liable to be seized in execution of a decree against him; and the fact that he has mortgaged it, will not prevent its being attached and sold in execution of the decree subject to the mortgage-debt.

It is quite true that a mortgagee in possession may come in and get removed an attachment against the property of which he is in possession; yet I do not think that the fact that the person who is sought to be examined alleges, even on oath, that he is a mortgagee in possession (such allegation not having been tried and determined by the Court) deprives the Court of the power to order such a person to be examined respecting the property; because it must be remembered that at the time the order has to be made, in all probability it is not known whether the mortgagee is in possession or not, and it is possible that, on examination, the Court might be of opinion that the examinee was either not in possession at all, or not in possession *as mortgagee*,

and thereafter order an attachment to be placed or continued on it. To hold that such an allegation would prevent the Court examining such a person, would be, in my opinion, placing a premium upon judgment-debtors setting up persons to prefer false claims as mortgagees in possession, and would thus hamper the Court in giving to judgment-creditors that assistance to which they are entitled at its hands. Consequently I hold that the order of 9th February, 1893, was rightly made, and the summons of the 17th February, 1893, must be dismissed with costs. Counsel certified for.

*Summons dismissed.*

On the 23rd March, 1893, *Lang* (Acting Advocate General) on behalf of Premábái applied to the Court (consisting of Sargent, C. J., and Telang, J.) in its extraordinary jurisdiction for revision of the order made by Starling, J., on the 9th February, 1893, under section 622 of the Civil Procedure Code (XIV of 1882), and for a rule *nisi* calling on Messrs. Bháishankar and Kángá to show cause why the said order should not be set aside, and also for an *interim* stay of the said order.

SARGENT, C. J. :—We do not think we have power to grant the application under section 622. That section does not seem to apply to a case like this, where the order, of which a review is sought, was made by the High Court. We think the Court referred to in the section, whose records may be called for, is a Court other than the High Court, and we must, therefore, refuse this application.

*Application refused.*

Attorneys :—Messrs. *Bháishankar and Kángá*, and Messrs. *Bicknell, Merwánji and Motilál.*