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defendants, or either of them, in respect of the same. We ask the District Judge to record findings on these issues :—

1. Whether the book entry represented a loan or a provision for maintenance ?

2. Whether the defendants, or either of them, are liable, and if so, for what amount ?

He should certify his findings on these points within two months.

Issues sent down.

ORIGINAL CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Strachey.

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 March 25.

RAGHUNATH MUKUND (PLAINTIFF) v. SAROSH K. R. KAMA AND OTHERS (DEFENDANTS).^{*†}

Civil Procedure Code (Act XIV of 1882), Secs. 278-283—Attachment of same property in execution of decrees obtained by different creditors—Claim made in one suit to attached property under section 278—Order made under section 281—Suit by claimant to establish right—All attaching creditors made defendants to suit—Parties—Practice—Civil Procedure Code (Act XIV of 1882), Sec. 28—Small Cause Court—Jurisdiction—Declaratory decree.

The first and second defendants obtained a decree in Suit No. 1548 of 1897 against Runchordas, described as the owner of the Wahalan Mills, and attached property on the mill premises. Twelve other creditors also brought twelve other similar suits and obtained decrees against other persons who were also described as owners of the Wahalan Mills, and attached the same property. In Suit No. 1548 of 1897, Raghunath Mukund (the present plaintiff) under section 278 of the Civil Procedure Code (Act XIV of 1882) claimed the property. His claim was disallowed, and he was ordered to bring a suit under section 283. No claim or order was made in the case of the other twelve suits. Raghunath now sued, in pursuance of the above order, to recover his property, and he included as defendants not merely those (defendants Nos. 1 and 2) who had been plaintiffs in Suit No. 1548 of 1897, but also those who had been plaintiffs in the twelve other suits, and who had attached the property in execution of their decrees. It was objected that no suit would lie against the latter, as in their suits no claim had been made to the goods which they had attached and no order made under section 281 of the Civil Procedure Code (Act XIV of 1882).

* Small Cause Court Reference, No. 9585 of 1897.

Held (1) that the suit lay against the defendants (other than Nos. 1 and 2), although no claim had been made or order passed under section 281 of the Civil Procedure Code. The summary remedy given by section 278 of the Civil Procedure Code (Act XIV of 1882) is alternative to the remedy by way of suit. The object of section 278 is not to deprive a claimant of his remedy by suit, but to give him, if he is diligent, a more speedy and summary remedy.

(2) That the Court of Small Causes had jurisdiction to try the suit. In substance the suit was a suit for goods, though as a matter of form the decree might contain a declaration. A suit for the release of goods wrongfully seized is not a declaratory suit under section 42 of the Specific Relief Act (I of 1877).

(3) That although the value of the property claimed by the plaintiff was admittedly over Rs. 2,000, the Court of Small Causes had jurisdiction. The plaintiff was entitled to abandon part of his claim.

(4) That the plaintiff might join in one suit as defendants persons who had decrees against different persons. The right to relief was in respect of the same matter and, therefore, fulfilled the requirements of section 28 of the Civil Procedure Code, 1882.

CASE stated for the opinion of the High Court under section 69 of the Presidency Small Cause Courts Act (XV of 1882) by C. W. Chitty, Chief Judge :—

“ 1. This is a suit brought by the plaintiff to recover from the defendants a sum of Rs. 2,000, being a portion of a larger sum of Rs. 3,000, the value of certain goods mentioned in the schedule annexed to the plaint, which goods were attached by the defendants in execution of certain decrees of this Court. The plaintiff in the alternative seeks to recover the said sum of Rs. 2,000 for damages sustained by the plaintiff by reason of the defendants' wrongful acts in attaching or causing to be attached and sold in execution of their decrees the goods which belonged to the plaintiff and in which their judgment-debtors had not any right, title or interest, or for money had and received for plaintiff's use.

“ 2. The facts which it is necessary to state for the purposes of this reference are as follows.

“ There is, in Bombay, a mill known as the Wahalan Mill, and the business of the mill is, or was, carried on in the name of the Wahalan Spinning and Weaving Company. The proprietorship of the mill and the business is in dispute, and it is a question which will doubtless have to be determined by the Courts sooner

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or later, if not in this suit. It is sufficient now to say that the business of the mill ended in a loss, and the proprietor or proprietors became heavily involved, and eventually the mill had to cease working. The creditors then proceeded to file suits. The first suit filed in this Court was Suit No. 1548 of 1897, in which the first and second defendants were plaintiffs and one Runchordas Goculdas, described as 'proprietor of the Wahalan Spinning and Weaving Company', was defendant. Twelve more suits were filed, in which the defendants in this suit (other than defendants Nos. 1 and 2) were the several plaintiffs and one Lakshmishankar Pranshankar was defendant. A fourteenth suit was filed by another creditor (not a defendant in this suit) in which Lakshmishankar Pranshankar, his two brothers Shivshankar Pranshankar and Nathushankar Pranshankar, and Raghunath Mukund (the present plaintiff) were all joined as parties defendants. I believe that other suits have been filed subsequently, but they are not in question here.

"3. In all the suits above mentioned, decrees were passed and all the judgment-creditors levied attachments on the moveable property lying on the mill premises, consisting of machinery, mill stores and the like. In Suit No. 1548 of 1897 the present plaintiff and Lakshmishankar Pranshankar preferred a claim to the attached property, alleging (as the plaintiff now alleges) that the plaintiff was the real owner of the Wahalan Mill, and that the property attached was his property. The claimant notice came on before me for hearing on the 1st July, 1897. It then appeared that Lakshmishankar Pranshankar, who was absent, was not properly represented. It was also conceded on all sides that the question of the ownership of the attached property was too intricate to be satisfactorily decided on a claimant notice. I, therefore, formally disallowed the claim and relegated the plaintiff to a substantive suit under section 283 of the Civil Procedure Code (Act XIV of 1882) to be filed within six months.

"4. The plaintiff accordingly on the 13th August, 1897, filed the present suit and joined as defendants not only the plaintiffs in Suit No. 1548 of 1897 in which the claim was preferred, but also the plaintiffs in the twelve suits above mentioned in which Lakshmishankar Pranshankar was the sole defendant. In those

twelve suits no claim was preferred, or objection made, to the several attachments.

“The suit came on before me for hearing on the 17th November, 1897. The main issue raised by all the defendants was whether the goods in question were, in fact, the goods of the plaintiff, but besides that issue there were several preliminary issues on which the opinion of their Lordships is now solicited.”

The following were the preliminary issues :—

1. Whether this suit will lie against the defendants (other than defendants Nos. 1 and 2), no claim having been preferred, or objection made, in their suits under section 278 of the Civil Procedure Code, and no order having been passed under section 281 ?

2. Whether this Court has jurisdiction to try this suit, it being, in effect, a suit for a declaratory decree ?

3. Whether this Court has jurisdiction, because the value of the property claimed by the plaintiff as his own is admittedly over Rs. 2,000, and plaintiff cannot, as he purports to do, abandon the excess ?

4. Whether the plaintiff can join in one suit, as parties⁴ defendants, plaintiffs who have decrees against different persons ?

Raikes, for plaintiff.

Vicaji, for defendants Nos. 1 and 2.

The following authorities were cited :—*Sundar Singh v. Ghazi*⁽¹⁾; *Varajlal v. Kachia*⁽²⁾; *Lalchand v. Sakharam*⁽³⁾; *Venkapa v. Chenbasapa*⁽⁴⁾; *Krishnaji v. Bhaskar*⁽⁵⁾; *Nito Kalee v. Kripanath*⁽⁶⁾; *Deen Dyal v. Poran Dass*⁽⁷⁾; *Chandra Bhusan v. Ram Kanth*⁽⁸⁾; article 11 of Schedule II of Limitation Act (XV of 1877); sections 19 and 20 of Act XV of 1882 (Presidency Small Cause Courts Act); *Colvin v. Mrs. Barbara Owen*⁽⁹⁾; *Nathu v. Kalidas*⁽¹⁰⁾;

(1) (1896) 18 All., 410.

(2) (1896) 22 Bom., 473.

(3) (1868) 5 Bom. H. C. Rep., 139 (A. C.)
at p. 143.

(4) (1871) 4 Bom., 21.

(5) (1880) 4 Bom., 611.

(6) (1867) 8 Cal. W. R., 353.

(7) (1868) 9 Cal. W. R., 474.

(8) (1885) 12 Cal., 108.

(9) (1869) 2 Reng. L. R., 212.

(10) (1877) 2 Bom., 365.

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Gordhan v. Kasandas⁽¹⁾; *Chhaganlal v. Jeshan Rav*⁽²⁾; *Pagi Pärtap v. Varajlal*⁽³⁾; *Khursedji v. Pestonji*⁽⁴⁾.

FARRAN, C. J.:—We answer the first question in the affirmative, being of opinion that the suit will lie against the defendants (other than defendants Nos. 1 and 2), though no claim has been preferred or objection made in their suits under section 278 of the Civil Procedure Code, and no order passed under section 281. The summary remedy given by section 278 of the Civil Procedure Code to a person whose property has been wrongfully attached, appears to us to be alternative with the more elaborate one by way of suit, which he, if so minded, may adopt. The context of the section shows, we think, that this is so. If the claimant desires to adopt the summary remedy he must do so without delay. No period within which he must make his claim under section 278 is specified, but if he unduly delays to make it, the section enacts that he shall be relegated to a suit. The object of the section is not, therefore, to deprive a claimant of his remedy by suit, but to give him, if he is diligent, a more speedy and summary remedy. The case cited by the Chief Judge, *Man Kuar v. Tara Singh*⁽⁵⁾, has been dissented from in *Sundar Singh v. Ghasi*⁽⁶⁾ and, we think, rightly so. Our view of the law is in accordance with *Lalchand v. Sakharam*⁽⁷⁾, and *Chandra Bhusan v. Ram Kanth*⁽⁸⁾. The *cursus curiæ* has, we believe, as observed in *Sundar Singh v. Ghasi*⁽⁶⁾, run in this direction for many years in all the High Courts.

The second question must also, we think, be answered in the affirmative. The direct object of a claimant whose goods have been seized by the Sheriff is to get his goods released from attachment, and not merely to have it declared that they are his goods. In substance the suit is a suit for the goods, though as a matter of form the decree may contain a declaration. A declaratory suit properly so called is a suit of the nature described in section 42 of the Specific Relief Act. When a man's goods

(1) (1879) 3 Bom., 179.

(5) (1885) 7 All., 583.

(2) (1879) 4 Bom., 503.

(6) (1896) 18 All., 410.

(3) (1884) 8 Bom., 259.

(7) (1868) 5 Bom. H. C. Rep., 139 at p. 143.

(4) (1888) 12 Bom., 573.

(8) (1885) 12 Cal., 108.

(9) (1896) 18 All., at p. 412.

are wrongfully seized, there is no discretion vested in the Court as to whether it will entertain a suit for their release or not. The plaintiff is entitled to have them released. It would be an error to call a suit intended to have such a result a suit for declaration.

As to the third question, we think the plaintiff was entitled to abandon part of his claim so as to bring the case within the limits of the Small Cause Court jurisdiction.

The fourth question must also be answered, we think, in the affirmative. The right to relief against all the attaching creditors is in respect of the same matter, and so the suit fulfills the requirements of section 28 of the Civil Procedure Code. Mr. Vicaji contends that as some of the claimants have attached the property as that of Runchordas Goculdas, while others have attached it as the property of Lakshmishankar Pranshankar, the provisions of section 28 do not cover the case, but that does not appear to us to vary the plaintiff's right of suit. Both sets of creditors have attached goods which the plaintiff claims as his. The plaintiff must establish his ownership as against both. The law does not compel him to establish it as against each attaching creditor, or against each set of attaching creditors. It would be very unfortunate, we think, if it did, though it might be an advantage to the legal profession.

The costs of the reference will be costs in the case.

Attorneys for plaintiff:—Messrs. *Nanu and Hormusji*.

PRIVY COUNCIL.

KARAMSI MADHOWJI (DEFENDANT), APPELLANT, *v.* KARSANDAS
NATHA AND OTHERS (PLAINTIFFS), APPELLANTS.

On appeal from the High Court at Bombay.

Hindu law—Will—Construction—Gift conditional on adoption—Condition precedent—Direction to adopt given to the widow of the testator's deceased son, not carried out—Bequest of residuary property—Condition precedent not fulfilled

The will of a childless testator directed that the widow of his deceased son should adopt a boy, then aged nine years, who was the son of the testator's nephew. To this boy the testator bequeathed his residuary estate to be made

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June 28,

July 12.

* Present: LORDS WATSON, HOBHOUSE, and DAVEY, and SIR R. COUCH.