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PRIVY COUNCIL.

29 C. 461.

ships agree, lays down the law very clearly. He then asks whether there was in this case a common intention to wager; and he adds: "I do not see how I can so [470] hold having regard to the fact that the rice was in certain instances delivered and paid for." But he does not observe that the instances all belong to the class of contracts as to which it is reasonable to infer that they were genuine contracts for the sale and delivery of goods.

Their Lordships hold that the consideration of the notes sued on was a number of wagering contracts within the meaning of the Indian Contract Act. They will humbly advise His Majesty so to declare, and reversing the decree below to dismiss the suit with costs. The plaintiff must also pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellants: *Hopgoods and Dawson.*

Solicitors for the respondents: *Bramall, White and Sanders.*

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29 C. 470.

APPELLATE CIVIL.

Before Mr. Justice Stevens and Mr. Justice Harington.

SHOILOJANUND OJHA *v.* PEARY CHARAN DEY.* [16th May, 1902].

Attachment—Idol—Offerings to an idol, attachment of—Civil Procedure Code (Act XIV of 1882) *s.* 266—'*Saleable property*'—*Right to receive offerings to an idol—*'*Disposing power*' *over such offerings—Decree, execution of.*

Offerings which may in future be made to a Hindu idol cannot be attached in execution of a decree against the idol, the right to receive such offerings not being a "saleable property" within the meaning of s. 266 of the Civil Procedure Code.

THE judgment-debtor Shoilojanund Ojha appealed to the High Court.

Peary Charan Dey and others obtained a decree in the Court of the Subordinate Judge of Deoghur for Rs. 1,170 against Shoilojanund Ojha, the High Priest of the Temple of [471] Baidyanath, representing the Hindu idol *Sri Baidyanath Jeo* of Deoghur, and in execution thereof attached the offerings which might in future be made to the idol *Baidyanath Jeo.* Shoilojanund, the judgment-debtor, raised an objection to the attachment of future offerings to the idol as illegal, but the Subordinate Judge disallowed the objection on the grounds that similar attachments had been made before against the same judgment-debtor; that the offerings had been under attachment for several years to satisfy other decrees in respect of which a Receiver had been appointed.

The Deputy Commissioner of the Sonthal Parganas, on appeal, was of opinion that offerings to an idol could be estimated with the same accuracy as the income from a landed estate; that the right of receiving such offerings was a 'saleable property' attaching to the temple; and that the judgment-debtor had a 'disposing power' over such profits; and as there were other properties from the income of which the worship of the idol might be performed, the order attaching the offerings was not

* Appeal from order No. 251 of 1901, against the order of D. H. Kingsford, Esq., Deputy Commissioner of Dumka, in the Sonthal Parganas, dated the 18th April 1900, affirming the order of T. E. Piffard, Esq., Subordinate Judge of Deoghur, dated the 9th of November 1899.

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detrimental to any religious observance properly entitled to respect, and he accordingly dismissed the appeal.

Shoilojanund Ojha appealed mainly on the ground that such offerings were not attachable under the provisions of s. 266 of the Code of Civil Procedure.

Dr. *Rash Behary Ghose* (with him Babu *Joy Gopal Ghosh* and Babu *Surendra Nath Ghoshal*) for the appellants. The only question is—Whether, in execution of a decree against the *shebait* of a Hindu idol, the offerings that may be made to the idol can be attached? I submit they cannot. Offerings that may, in future, be made to an idol being quite uncertain in their nature are incapable of being estimated or valued; and until they are actually made, they are nobody's property. S. 266 of the Civil Procedure Code points out what properties of the judgment-debtors are liable to attachment; but there is no provision in that Code under which offerings to a Hindu idol can be attached—*Haridas Acharjia Chowdhry* v. *Baroda Kishore Acharjia Chowdhry* (1), *Syud Tuffuzzool Hossein Khan* v. *Rughoonath Pershad* (2), *Girijanund Datta Jha* v. *Sailajanund Datta Jha* (3).

[472] Babu *Bipin Behary Ghose* for the decree-holders. As a Receiver has already been appointed, this question does not arise; see *Udoy Kumari Ghatwalin* v. *Hari Ram Shaha* (4). Our application is virtually under s. 295 of the Civil Procedure Code for rateable distribution of the assets. [HARINGTON, J.—Has the judgment-debtor disposing power over the offerings?] It has been so held by the Lower Appellate Court.

Babu *Joy Gopal Ghosh* in reply. The Receiver was appointed after we made the objection to the attachment of offerings, and therefore we are not affected by that. The judgment-debtor has no 'disposing power' over the offerings: see *Mallika Dasi* v. *Ratanmani Chakarvarti* (5). The future offerings to an idol are entirely dependent on the will of third parties, and they being uncertain cannot be attached—*Bebee Tokai Sherob* v. *Beglar* (6).

STEVENS AND HARINGTON, JJ. The question which we have to decide in this appeal is whether or not any offerings which may in future be made to a Hindu idol may be attached in execution of a decree for money against the idol.

The Courts below have both held that such offerings are attachable,—the Court of first instance probably merely on the ground that similar attachments had been made before; the Lower Appellate Court on the ground that the right to receive offerings is a saleable property attaching to the temple, and the judgment-debtor has a disposing power over the profits accruing.

The fact that similar attachments had been made before is of course nothing to the purpose. The real question is, whether the attachment is legal with reference to the provisions of s. 266, Code of Civil Procedure. The offerings in question are, it appears, entirely voluntary and therefore entirely uncertain, although it may be, as the Lower Appellate Court says, that an estimate may be made of the average income derivable from that source. It seems to us very difficult to say that there is, properly speaking, a right to receive these offerings where there is no corresponding obligation to make them. It is difficult to see, therefore, how there

(1) (1899) I. L. R. 27 Cal. 38.
(2) (1871) 14 Moore I. A. 40, 51.
(3) I. L. R. 23 Cal. 645, 655.
(4) (1901) I. L. R. 28 Cal. 483.
(5) (1897) 1 C. W. N. 493.
(6) (1856) 6 Moore I. A. 510.

can be any such right as could [473] constitute a "saleable property" within the meaning of s. 266, Code of Civil Procedure. The fact that there is a disposing power in the idol, as represented by the High Priest, over the offerings when once received does not necessarily imply a disposing power over what is called the right of receiving them.

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We think that the attachment in the present case was not an attachment which could be made under the provisions of s. 266, Code of Civil Procedure, and that we must therefore decree the appeal with costs.

Appeal allowed.

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29 C. 473.

Before Mr. Justice Rampini and Mr. Justice Pratt.

MOYNA BIBI *v.* BANKU BEHARI BISWAS.* [19th March, 1902.]

Mahomedan Law—Mother's power to bind her minor children's estate—Minor—Guardian—Liability of minor for the act of mother purporting to act as guardian.

Under the Mahomedan Law a mother is not *de facto* guardian of her minor children and, unless she is appointed a guardian *de jure* or is especially authorised by the District Judge, she has no power to bind their estate by mortgage or otherwise. Such an act by the mother is entirely void.

***Bhutnath Dey* v. *Ahmed Hosain* (1), *Baba* v. *Shivappa* (2), and *Nizamud-din Shah* v. *Ananda Prasad* (3) referred to.**

THE defendants Nos. 1, 2 and 3 appealed to the High Court.

This appeal arose out of an action brought by the plaintiff to enforce a mortgage bond against the defendants Nos. 1 to 3. The allegation of the plaintiffs was that the first defendant, Moyna Bibi, executed a mortgage bond both for herself and as mother and guardian of her minor daughters, defendants Nos. 2 and 3. The defence of the first defendant was that the mortgage bond was not genuine, and that there was no consideration for it. [474] The other two defendants contended that they knew nothing about the said bond; that, under the Mahomedan Law, their mother had no right to mortgage their shares; and that, therefore, they were not bound by such a mortgage. The Court of First Instance found the bond to be genuine and duly executed by the first defendant, and the consideration for it to be the sum spent by the plaintiff for conducting litigation to save the property; and, as the transaction was for the benefit of the minors, *viz.*, defendants Nos. 2 and 3, they were directed to make restitution to the plaintiff to the extent of their shares in the mortgaged property. Accordingly, a mortgage decree was passed against defendant No. 1 and a money decree only against defendants Nos. 2 and 3, directing their shares in the mortgaged property to be released. On appeal to the District Judge of Nadia, Mr. G. K. Deb, the decision of the First Court was affirmed, but the decree was modified in one respect, namely, that the shares of defendants Nos. 2 and 3 were not to be released till they made restitution to the plaintiff to the extent of their shares.

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* Appeal from Appellate Decree No. 2784 of 1899, against the decree of G. K. Deb, Esq., District Judge of Nadia, dated the 31st of May 1899, modifying the decree of Babu Prasanna Kumar Ghose, Subordinate Judge of that district, dated the 30th of April 1898.

(1) (1885) I. L. R. 11 Cal. 417.
(2) (1895) I. L. R. 20. Bom. 199.
(3) (1896) I. L. R. 18 All. 378.