

has been dispossessed because symbolical possession has been given of the tank in question to the petitioner. Whatever, as between the parties, ultimately may be the legal effect of this, it does not amount to the dispossession contemplated by section 335. Section 318 throws at least a side light upon what is meant by "dispossession" in section 335.

I may point out that if the tank in question belongs to the opposite party, he can assert his right by suit: at present he is in physical possession of the tank.

The Rule must be made absolute with costs.

GEIDT, J. I concur.

Rule absolute.

30 C. 713 (=7 C. W. N. 821.)

[713] CIVIL REFERENCE.

ABDUL GAFUR v. W. J. ALBYN.* [1st May, 1903.]

Execution of decree—Attachment of salary—Prohibitory order—Railway servants, salaries of—Civil Procedure Code (Act XIV of 1882) ss. 268, 617—Small Cause Court, jurisdiction of—Disbursing office outside the jurisdiction of the Court—Transfer of decree for execution.

A Small Cause Court has no authority to attach the salary of a Railway servant that has not yet fallen due, by a prohibitory order issued under s. 268 of the Code of Civil Procedure to the officer whose duty it is to disburse the salary, when the disbursing office is situate outside the jurisdiction of the Court. The decree must be sent for execution to the Court within the local limits of which the disbursing office is situate.

A disbursing officer who has so far submitted to such a prohibitory order as to recover and keep in deposit with him the portion of the salary attached, is not bound to pay the money into the Court which attached it without jurisdiction.

Hossein Ally v. Ashutosh Gangoolly (1) and *Parbatî Charan v. Panchanand* (2) followed; *In the matter of J. Hollick* (3) explained.

[Foll. 28 Bom. 198=5 Bom. L. R. 808. Ref. 39 Cal. 104.]

CIVIL REFERENCE.

This was a reference made by the Munsif of Govindapur, exercising the powers of a Small Cause Court Judge, under s. 617 of the Code of Civil Procedure.

The case as stated by the learned Munsif for the decision of the High Court, in which the facts and his opinions are fully set out, was as follows:—

"One Abdul Gafur obtained a Small Cause Court decree for Rs. 87-18 from this Court against one Mr. W. J. Albyn, who is a gunner guard employed at Dhanbad, a Railway station of E. I. Railway within the local limits of the jurisdiction of this Court, on the 23rd June last. On the 31st July 1902, he took out execution and prayed for the attachment of the judgment-debtor's salary for the month of July 1902. An attachment order was first served on the Agent of the said Company, who resides in [714] the town of Calcutta, under section 268, Civil Procedure Code. In reply, the Chief Auditor informed me that the judgment-debtor's salary for July had been passed for that month prior to the receipt of this Court's order, and at the same time he raised objection to the jurisdiction of this Court to pass an order for attachment. As the Chief Auditor, instead of the Agent, addressed the letter to me named above, I requested him to name the officer of the said Railway Company whose duty it is to disburse the salary of the said judgment-debtor, and to let me know where the salary of the judgment-debtor is actually paid. He by his replies

* Civil Reference No. 1A of 1903 by Jnanendra Chandra Banerjee, Munsif of Gobindapur, dated January 26, 1903.

(1) (1878) 3 C. L. R. 30.

(2) (1884) I. L. R. 6 All. 248.

(3) (1868) 2 B. L. R. (A. C.) 108; 10 W. R. 447.

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informed me that the disbursing officer is he himself, and that the salary of the judgment-debtor has for the past few months been paid on the station at Dhanbad, which is within the jurisdiction of this Court. The execution case was dismissed as infructuous on the 28rd August 1902.

"The decree-holder on the 28rd September 1902 again applied for execution of his decree. In the said application he prayed for the attachment of a moiety of the judgment-debtor's salary for the month of September 1902 and of subsequent month's until the entire amount of the decree was realised. Accordingly an order for attachment under section 268, Civil Procedure Code, was passed and a prohibitory order was served on the judgment-debtor, and another copy of the same was also served upon the Chief Auditor, whose office is in the town of Calcutta, through the Small Cause Court, Calcutta. That order was duly served on the said officer, as would appear from the affidavit of the bailiff of the Small Cause Court, Calcutta. The Chief Auditor by his letter dated the 12th December informed me that the amount of the decree was recovered from the debtor and held in deposit pending orders from the Court.

"I accordingly made an order and served a copy of the same through the Small Cause Court, Calcutta, upon the Chief Auditor, requiring him to remit the attached money to this Court by postal money-order. He in reply by his letter dated the 5th January 1903 stated that no payment could be made until an order from the Court of Small Causes, Calcutta, was received directing payment of the attached amount into that Court. I then addressed a letter to the Agent of the said Company, pointing out that the Calcutta Small Cause Court served my order on the Chief Auditor in a ministerial capacity, and as such is not competent to pass any order in connection with the execution case under reference, and that only this Court is competent to pass an order for payment of the money held under attachment, and asking him to direct the Chief Auditor to carry out the order of this Court without further delay. The agent by his letter dated the 23rd January disputes this Court's authority to require payment into Court of the money attached, and has thereby declined to give effect to the order of this Court."

"Under the circumstances stated above, and inasmuch as the decree under execution is a Small Cause Court decree, I am (under s. 617, Civil Procedure Code) compelled to refer to the Hon'ble Court for its consideration and orders the following questions :—

"1. Whether the salaries of Railway servants residing and working for gain and actually getting their pay within the local jurisdiction of a Court can be attached in execution of Small Cause Court decrees passed by such Court ?

[715] "In my opinion such salaries could be attached when the judgment-debtors reside and work for gain within the jurisdiction of such Court, and the Clause (a) of para. 2, s. 223, Civil Procedure Code, does not stand in the way of executing decrees by such Court against such judgment-debtors.

"2. Whether in such cases such Court is competent to serve through the Small Cause Court, Calcutta, the attachment named in paras 4 and 5 of s 268, Civil Procedure Code, on the disbursing officer having his office in the town of Calcutta, and the said disbursing officer on receipt of such order is bound to give effect to the orders of the Court ?

"In my opinion s. 268, Civil Procedure Code, fully authorises such Court to serve upon the disbursing officer in Calcutta an order attaching the salaries of Railway servants residing, working for gain, and getting their pay at stations within the jurisdiction of such Court. *In the matter of J. Hollick* (1) supports my opinion.

"3. When the salary of a Railway servant working within the local jurisdiction of a Court has been ordered to be attached in execution of a Small Cause Court decree passed by such Court, and when the disbursing officer has given effect to such attachment by recovering the decree money from a Railway servant and holding in deposit the said amount, whether such Court is competent to order the the disbursing officer to pay the attached amount into Court (to remit the amount by postal money-order), and if any such order is made and duly served upon such disbursing officer, whether the latter is bound to carry it out ?

"In my opinion the last and the last but two paras. of s. 268, Civil Procedure Code, authorise such Court to pass any order it thinks proper in connection with the attached amount, and the disbursing officer is bound by such order,

(1) (1868) 2 B. L. R. (A. C.) 108; 10 W. R. 447.

and he is also bound to pay the attached amount into such Court, and there is no valid ground for the Railway officers to dispute the power of such Court to ask the Chief Auditor to send money to the Court. A decree-holder would certainly derive no benefit by attaching the salary of a Railway servant if the disbursing officer simply holds the attached money in deposit without making any payment of the same. The decree-holder's object for attaching such salary is ultimately to get the amount in satisfaction of his decrees. In my humble opinion it is absurd and unreasonable to suppose that a Court which has power to attach the salary of a Railway servant has no power to give the judgment-creditor the relief of actually obtaining the attached money. The last para. of s. 268, Civil Procedure Code, enjoins that a disbursing officer is to pay into Court the attached money from time to time, and I think he is bound to do so whenever so ordered by the attaching Court."

Mr. O'Kinealy and Dr. Ashutosh Mookerjee for the Railway Company.

BANERJEE AND PARGITER, JJ. This is a reference from the Munsif of Gobindapur exercising the powers of a Small Cause Court Judge, under section 617 of the Code of Civil Procedure, [716] which has been transmitted to this Court through the Judicial Commissioner of Chota Nagpur, and the first question referred to us is, whether the salaries of Railway servants residing and working for gain and actually getting their pay within the local jurisdiction of a Court can be attached in execution of a Small Cause Court decree passed by such Court.

The learned Munsif is of opinion that the question should be answered in the affirmative, and so it ought from one point of view, no doubt. If the attachment is made by the Small Cause Court at or about the time when the agent of the disbursing officer is going to hand the money to the Railway servants within the jurisdiction of that Court, the attachment would be valid, for it would then be an attachment of a debt due to the judgment-debtor made within the jurisdiction of the attaching Court. But if the attachment is of salary that has not actually fallen due, and is made in the manner indicated in section 268 of the Code of Civil Procedure by a prohibitory order requiring the officer whose duty it is to disburse the salary, to withhold every month such portion as the Court may direct until the further orders of the Court, the attachment in such a case is attachment of a debt not of course actually due to the judgment-debtor, but anticipated to fall due to him, month by month, at the place where the disbursing officer has his office, and such an attachment can be made only by the Court having jurisdiction at the place where the disbursing officer has his office. It would seem from the statement of facts in this reference that the attachment here was of this latter description, and if that was so, the attachment was made in Calcutta, where the Munsif of Gobindapur has no jurisdiction. The view we take is in accordance with that taken by this Court in the case of *Hossein Ally v. Ashotosh Gangoolly* (1) and by the Allahabad High Court in the case of *Parbati Charan v. Panchanand* (2), and it is not really in conflict with that taken by this Court in the case of *J. Hollick* (3), because there the order was made by the Monghyr Court, within whose jurisdiction the disbursing officer's office was held, that office being held at Jamalpur. We may here observe that although the [717] previous attaching order was made without jurisdiction, we understand from the learned counsel for the Railway Company that the money attached has not been paid to the judgment-debtor, but is still held in deposit, and would be available for the decree-holder if only the

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(1) (1878) 3 C. L. R. 80.
(2) (1884) I. L. R. 6 All. 243.

(3) (1868) 2 B. L. R. (A. C.) 109; 10
W. R. 447.

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30 C. 718=7
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attachment is made in due form by the decree being sent down for execution to the Calcutta Small Cause Court.

The second question in the reference has in effect been already answered, that question being whether in such cases such Court is competent to serve through the Small Cause Court, Calcutta, the attachment order named in paragraphs 4 and 5 of section 268 of the Code of Civil Procedure, on the disbursing officer having his office in the town of Calcutta, and the said disbursing officer on receipt of such order is bound to give effect to the orders of the Court. If the attachment is of salary to fall due and is to be made in the manner indicated in section 268, which we have already referred to, the attachment itself could not be made by the Gobindapur Small Cause Court without the decree being transferred for execution to the Court of Small Causes at Calcutta.

The third question is whether "when the salary of a Railway servant working within the local jurisdiction of a Court has been ordered to be attached in execution of a Small Cause Court decree passed by such Court, and when the disbursing officer has given effect to such attachment by recovering the decree money from a Railway servant and holding in deposit the same amount, such Court is competent to order the disbursing officer to pay the attached amount into the Court (to remit the amount by postal money-order) and if any such order is made and duly served upon such disbursing officer, whether the latter is bound to carry it out."

To the third question stated in the reference our answer is this: that the disbursing officer when he submitted to the order for attachment did so under a mistake of fact, namely, that the order had really emanated from the Calcutta Small Cause Court, which has jurisdiction in the matter. But when he was informed that the order did not really emanate from that Court but proceeded from the Gobindapur Court, which has no jurisdiction over him, he was justified in not remitting the money to the Gobindapur Court. But as we are informed by the learned counsel for [718] the Railway Company, and as we have already observed above, the money is still in deposit with the disbursing officer, and will be available for the decree-holder if only the attachment is made in due form by the decree being transferred to the Small Cause Court at Calcutta for execution.

30 C. 718.

APPELLATE CIVIL.

PASUPATI NATAH BOSE v. NANDO LAL BOSE.* [27th March, 1903.]

Execution of decree—Decree declared void as against one of the parties, effect of—Fraudulent decree.

A brought a suit for partition against B and C, and obtained a decree by consent, based upon the award of certain arbitrators. C subsequently brought a suit for a declaration that the award and the decree were fraudulent and void as against her. The suit was decreed in her favour. On an application for the execution of the decree by A against B, objection was taken by the latter on the ground that, inasmuch as the decree was declared to be fraudulent and void as against C, it was not susceptible of execution:—

Held, that as the decree was declared fraudulent and void as against C only, it was a subsisting decree between A and B and was susceptible of execution.

* Appeal from Order No. 509 of 1900, against the order of Ram Gopal Chaki, Subordinate Judge of 24-Parganas, dated December 15, 1900.