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ABBOTT v. ABBOTT AND CRUMP.

I should have been inclined to hold an equity of redemption not liable to attachment. On the whole, I consider that what the judgment-creditor desires to attach is not "property" within the meaning of the words section 205. It has been brought to my notice that, in another case, in respect to this very property, Macpherson, J., granted a similar attachment; but I cannot say whether this point was brought to his notice or considered by him; and as I do not know whether Mr. Justice Macpherson differed from my view, I must leave the party to appeal rather than refer the question to a Full Bench.

Application refused.

Attorneys: Messrs. *Robertson, Orr, Harris,* and *Francis.*

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April 7.

Before Mr. Justice Phear.

THAMA SING *v.* KALIDAS ROY.

Execution—Attachment—Partnership—Act VIII of 1859, ss. 233, 234.

A decree-holder in execution attached and seized certain property which belonged to the judgment-debtor in partnership with another person, who alone at the time of attchment was in actual possession. *Held*, that such property was the subject of attachment in execution of the decree against the one partner, but such attachment must be limited to his share, and the attachment should be by prohibitory order, not by actual manual seizure.

THE plaintiff had obtained a decree in this suit on December 2nd, 1869, for rupees 8,549-10, and rupees 433-5 costs, with interest at six per cent. per annum. The defendant had carried on business in partnership with one Nabinchandra Daw, principally as dealers in salt, at 34 Chalapatti, in Barrabazar. On the 12th March 1870, the plaintiff applied for execution of his decree; and by order of Court, the Sheriff attached and took possession of, on 14th March 1870, "all that *khari* salt "and *churah* salt lying in godowns in premises, 146 Huka-"patti, and 34 Chalapatti, in Barrabazar, in Calcutta." On 15th March, Nabinchandra Daw gave notice of his claim to the property seized. He was at the time of seizure in actual possession of the property, but the defendant was not.

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Mr. *Kennedy* and Mr. *Phillips* for the claimants now applied to have the attachment removed.

The *Advocate-General* and Mr. *Marindin* for the judgment-creditor.

PHEAR, J.—I am not satisfied that the claimant has made out a title to have the attachment removed, but I think that the attachment ought to be limited to Kalidas Roy's share in the salt to which he is entitled in the firm of Kalidas Roy and Co. The mode of attachment in this case has not followed the provisions of Act VIII of 1859; the attrchment should be by notice, and not manually; and that being the case, I think each party should pay his own costs. Let the matter be mentioned to-morrow, and I will then decide finally.

The next day the following decision was given by

PHEAR, J.—The judgment-creditor admits that his debtor is only entitled, as member of a partnership, to a share in the salt seized. It is contended that there is no express provision in Act VIII of 1859 which directs any particular mode of attachment to be followed in attaching an undivided share of moveable property. In England, the Sheriff can only seize the entirety of a chattel; therefore, no doubt, when a partnership share is seized and sold in execution in England, the Sheriff takes manual possession of the chattel to the exclusion of the partners. But as I understand the procedure in this country, the like difficulty does not here arise. Act VIII of 1859 provides two modes of seizure. The one is that of actual manual possession by the officer of the Court; the other is by way of formal notice, or injunction forbidding alienation. The first applies only, as I understand Act VIII, to the case where the judgment-debtor is of his own right in actual possession of a chattel or moveable property, or where some third person is in possession of it on his behalf, under such circumstances that the judgment-debtor could claim sole immediate possession of it. In my judgment, attachment by manual seizure does not apply to a case like the present. Section 233 of Act VIII of 1859 provides that, "when the property shall consist of goods, chattels, or

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"other moveable property in the possession of the defendant, "the attachment shall be made by actual seizure, and the Nazir "or other officer shall keep the same in his custody, or in the "custody of his subordinates, and shall be responsible for the "due custody thereof." Probably this section would cover the case where a third person held possession solely under the control and for the benefit of the judgment-debtor; but it seems to be clear that section 234 intends the attachment to be by written order, whenever some other person than the judgment-debtor has the right to exclusive and immediate possession. The words are:— "Where the property shall consist of goods, chattels, or other, "moveable property to which the defendant is entitled, subject "to a lien or right of some other person to the immediate posses- "sion there of, the attachment shall be made by a written order, "prohibiting the person in possession from giving over the pro- "perty to the defendant." Here not only is the property not as a matter of fact in the possession of the judgment-debtor, but it is in actual possession of another person who has as great a right by the admission of the judgment-crditor to immediate possession as the judgment-debtor has. I think our law of procedure does not go to the extent of authorizing the judgment-creditor to take property out of the possession of a person entitled to immediate possession, not being the judgment-debtor. I must alter the form of the attachment, but it must date as of the original date. I have now expressed my opinion only; for I shall abstain from giving my decision till the point is referred to be decided by a Full Bench.

Application refused.

Attorney for the plaintiff: Baboo *Brajanath Mitter.*

Attorneys for the defendant: Messrs. *Gray & Sen.*