APPELLATE CIVIL.

Before Mr. Justice Norman, Officiating Chief Justice, Mr. Justice Bayley, and Mr. Justice Mitter,

1871
Jan. 16.

PRINCE GHOLAM MAHOMED (DEFENDANT) *v.* INDRACHAND JAHURI (PLAINTIFF).*

Attachment of Decree—Property—Decree—Irregularity of Attachment Act VIII of 1859, *ss.* 20 , 233 *to* 238.

A decree of Court falls within the description of "other property" in section 205 of the Civil Procedure Code, and is therefore, liable to attachment, which should be made under section 237.

PRINCE MAHOMED RAHIMUDDIN purchased a moiety of a decree in a suit pending in the Court of the Judge of the 24-Pergunnas, obtained by Shumsunissa Begum against Munshi Bazlur Rahim. Prince Mahomed Rahimuddin's name was not entered in the record as a co-plaintiff, or as being jointly interested in the decree with Shamsunissa ; but by two several orders in the suit, he was treated as being jointly interested with her in the decree, and standing in the position of a decree-holder. By the latest of these, dated the 26th of May 1868, it was ordered that he should be at liberty to bid as such, and that a certificate of receipt signed by him should be taken in part payment of his (8 annas) share of the decree.

On the 17th of August, Indrachand Jahuri, the plaintiff in the present suit, who had a decree against Prince Mahomed Rahimuddin, having applied for an attachment of the rights and interests of Prince Mahomed Rahimuddin in the decree an order was passed by the Subordinate Judge, who sent a rubakari to the Judge of the 24-Pergunnas, directing that the right, title, and interest of Rahimuddin in the decree should be attached.

*Regular Appeal, No. 93 of 1870, from a decree of the first Subordinate Judge of the 23. Pergunnas, dated 31st January 1870.

The Judge, on receipt of the rubakari, passed an order that the decree should be attached according to practice, and informed the Subordinate Judge that the decree had been attached, but it appears no notice of the attachment was given to Prince Mahomed Rahimuddin.

On the 24th of August, Prince Gholam Mahomed purchased from Prince Mahomed Rahimuddin his interests under the decree. After this date the sum of Rs. 1,64,339-1-9 was paid into Court by the defendant Munshi Bazlur Rahim, the judgment-debtor, on account of the share of Prince Mahomed Rahimuddin. The whole of this amount, less certain sums to which he admitted the right of the Agra Bank and of Mr. Wilkinson as Administrator-General, was subsequently taken out of Court by Prince Gholam Mahomed.

The present suit swa brought by Indrachand Jahuri against Prince Gholam Mahomed to recover the amount to whch the plaintiff would have been entitled under his attachment out of the sum paid into Court to the credit of Prince Rahimuddin.

The main point in the defence was that a decree of Court for money cannot be attached under the provisions of Act VIII of 1859.

The Subordinate Judge passed a decree in favor of the plaintiff. A regular appeal was then preferred to the High Court.

Baboos *Ramesh Chandra Mitter* and *Hem Chandra Benerjee*, for the appellant, contended (first) that the attachment was inoperative, inasmuch as it was not an attachment in accordance with any one of the sections between 233 and 238 of the Civil Procedure Code, the thing attached being a decree which is not property within the meaning of section 205 of the Code such as can be attached under the provisions of the Code ; (secondly) that, if this decree for money be considered a " debt," it should have been attached according to the mode prescribed in section 236 by giving proper notices ; that mode was not followed in this case.

Baboos *Bhairabchandra Banerjee* and *Ambika Charan Bose* for the respondents were not called upon.

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NORMAN, J. (after stating the facts as above).—Now we may observe that the 205th section of Act VIII of 1859 declares what are the several species of property liable to attachment and sale under decree,—namely, "lands, houses, goods, money, bank-"notes, Government securities, bonds or other securities for "money, debts, shares in the capital or joint stock of any rail-"way, banking or other public company or corporation, and all "other property whatsoever, moveable or immoveable, belong-"ing to the defendant, and whether the same be held in his own "name, or by another person in trust for him, or on his behalf,." Now we have no doubt but that a decree is property which falls within the description of "other property," in section 205, and is therefore declared to be liable to attachment and sale in execution of a decree. But when the sections from 233 to 238 are read through carefully, it will be found that no one of these sections appears to be exactly applicable to such property as a decree. We think, however, that, assuming that none of these sections contain any provisions appropriate for the attachment of a decree, it must not be taken that a decree which falls within the class of subjects declared liable to attachment by section 205 is therefore not so liable.

Of the several species of property, for the attachment of which provision is made by the several sections above mentioned, that which is most nearly analogous to the right of a decree-holder in a decree which is being executed in a Court of Justice, is a security in deposit in a Court of Justice, or money in a Court of Justice, or in the hands of any officer of Governmeant which is or may become payable to the defendant. The attachment of such property is provided for by Section 237

The attachment in the present case has been made in the manner prescribed by section 237, and we think that for the purpose of attaching the decree itself, and the money when it came into Court, the form of attachment under section 237 is perhaps the most appropriate. A decree for money may be considered as consisting of two things: first, the debt due from the judgment-debtor to the decree-holder; and, secondly, the security for that debt by a decree which renders it capable of being enforced. The one being capable of separation from the

other, the two things are distinct, one being a debt, the other being the security for that debt. Now, if a decree is to be treated merely as a debt, and if the only mode of attaching it is by an order for attachment under section 236,—namely, by a "written order prohibiting the creditor from receiving "the debt, and the debtor from making payment thereof," the security of a creditor attaching a decree will be very imperfect, because the attachment would not stay execution of the decree; and if the execution proceeds, and money is realized and paid into Court under the decree, if the decree-holder disregards the order of the Court, and applies to take out the money in contempt of the order of attachment served on him, he can do so, unless there is some order recorded in the Court executing the decree, prohibiting the decree-holder from receiving the money out of Court. There must therefore be some means of attaching the decree itself, more effectual than the ordinary attachment under section 236. No doubt it would be prudent and proper in case of attachment of a decree to serve the judgment-debtor with an order under section 236, in order to attach the debt due from him. But the want of such order will not affect the attachment of the decree.

In my opinion the attachment in the present case was valid and effectual. Prince Gholam Mahomed has taken out of Court money which was subject to the lien and attachment of the plaintiff Indrachand Jahuri. I think he is therefore liable to refund to Indrachand the money so taken, to the extent of his lien, and the Subordinate Judge was right in decreeing the plaintiff's case.

This appeal must therefore be dismissed with costs.

BAYLEY, J.—I concur.

MITTER, J.—I am of the same opinion. I think that the objection now taken before us was never pressed by the defendant in the Court below; and as it is not pretended by him that he took the assignment from Prince Rahimuddin without being aware of the attachment, I think he ought not to be permitted

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to take that objection now. Besides the mode of attachment adopted in this case is the one usually adopted in the Mofussil Courts, and I do not think that the appellant has been in any manner prejudiced by the irregularity he complains of, supposing it to be an irregularity at all.

Appeal dismissed.

[APPELLATE CRIMINAL.]

Before Mr. Justice Bayley and Mr. Justice Paul.

1871
June. 17.

THE QUEEN v. KALI CHANDRA SHAH AND MAHIMA RANJAN ROY CHOWDHRY.*

Criminal Procedure Code (Act XXV of 1861), *s.* 318—*Evidence on Oath—Actual Possession.*

In a proceeding under section 318 of the Criminal Procedure Code, to determine the right of actual possession, it is necessary that evidence should be taken upon oath.

THIS case arose out of a dispute for a chur claimed on the one hand by the zemindars of Kakina, and on the other hand by the izardar holding under the zemindar of Purbhobhog of Cooch Behar. The dispute commenced in the cold season of 1869-70, since which time petitions were filed on either side, and the police had been directed to investigate these cases. The police sent in their report in B form as true cases, at the same time giving it as their opinion that the izardar, holding under the zemindar of Purbhobhog, was in possession. Upon this report, on the 6th January 1871, it appears that the Officiating Joint Magistrate recorded a proceeding, giving reasons for apprehending a breach of the peace, and calling on the parties to produce any witnesses or other evidence regarding actual possession. Shortly after this proceeding, on the 10th January, one of the parties in this dispute, named Sheikh Burra

* Reference under section 434 of the Code of Criminal Procedure, by the Officiating Magistrate of Rungpore.