

Before Mr. Justice Kemp and Mr. Justice Glover.

KALI PFRSHAD DUTT (DECREE-HOLDER) v. RAJAH MAHOMED
JOWAHUR JUMMA KHAN (JUDGMENT-DEBTOR).*

1872
June. 14.

Priority of Attachment, Effect of.—Right of first attaching Creditor to proceed against other Property of Debtor after the Sale of the Property attached by a second attaching Creditor.

Baboo Kally Mohun Dass and Bama Churn Banerjee for the appellant.

Baboo Mohiny Mohun Roy for the respondent.

THE facts of this case and the points raised in appeal are fully set forth in the judgment of the Court delivered by

KEMP, J.—The decree-holder is the appellant in this case. It appears that he attached certain released *lakhiraj* lands in satisfaction of his debt. The judgment-debtor applied for time to raise the money by way of mortgage, or in some other way. The judgment-creditor allowed this, and the sale was postponed, the attachment subsisting. Subsequently, another creditor brought to sale the same property, and the property was sold. The judgment-creditor, the appellant before us, now seeks to attach and sell other property belonging to his judgment-debtor, and both Courts have held that he is not at liberty to do so, inasmuch as his attachment of the property first attached still subsists, and the lands are subject to all liability under his decree, and that he must therefore proceed against these lands and sell them, and that he is not at liberty to attach and sell other lands. We think that the finding of the Lower Courts is wrong. We have not been shown that the surplus sale proceeds are sufficient, supposing the special appellant to have priority of attachment, to satisfy the whole of his claim, and it is clear from the ruling in *Unnopoorna Dassea v. Gunga Narain Paul* (1) that “if two parties attach a property in execution of separate decrees, and the sale of the property takes place at the instance of the decree-holder who made the second attachment, the decree of the decree-holder who made the first attachment will be first satisfied from the sale proceeds; but the sale cannot be disturbed if such decree-holder, instead of taking his money out of the sale proceeds, put up the rights and interests of his debtor in the property again for sale.” Now in this case, as already observed, at the most all that the special appellant could claim would be the right of priority to be satisfied out of the sale proceeds; we have not been shown whether the sale proceeds

* Miscellaneous Special Appeal, No. 94 of 1872, from an order of the Judge of Beerbhoom, dated the 16th December 1871, affirming an order of the Subordinate Judge of that district, dated the 22nd of May 1871.

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would be sufficient to satisfy his decree, and it is represented to us that they are nothing like sufficient; and if he was to proceed to sell the property which has already passed by sale to a third party, the sale could not be disturbed. We think therefore that the judgment-creditor was perfectly justified in proceeding against any other property of his judgment-debtor and we do not see how the judgment-debtor is in any way prejudiced by his doing so. It is said that the sudder jumma of the property attached is Rs. 16,000; if that be the case, the judgment-debtor is clearly in a position to pay his just debts, and if he wants to avoid the sale, he must satisfy the decree.

The appeal is decreed with costs, and the decision of the Lower Court reversed.

Before Mr. Justice Phear and Mr. Justice Ainslie.

1873
 January 21.

THE QUEEN *v.* BHEEKOO KALWAR, *alias* BHEK SHA.

Criminal Procedure Code (Act X of 1872), s. 425—Trial of Fact of Unsoundness of Mind.

The facts of this case appear sufficiently in the judgment of

PHEAR, J.—In this case the prisoner has been convicted of murder and sentenced to death, and the record has come before us in due course for the confirmation of that sentence. The Judge reports that, under s. 271 of the Criminal Procedure Code, he enquired of the accused whether he wished to appeal, and he signified his intention of not doing so.

On referring to the record we find at the outset a statement written by the Judge to this effect:—“The demeanour of the accused when called on to plead to the charges was so peculiar that I entertained doubts as to his sanity. I therefore thought it necessary to try the question of the accused’s unsoundness of mind.” The Judge then states that he took the evidence of the Civil Surgeon, and concludes in these words:—“On the evidence of the Civil Surgeon, I cannot hesitate to pronounce that the accused is of sound mind and capable of making his defence.” Thereupon the trial proceeded before the jury.

S. 425 of the Criminal Procedure Code enacts that. “if any person committed for trial before a Court of Session shall, at his trial, appear to the Court to be of unsound mind and incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness of mind, and if satisfied of the fact shall give a special judgment that the accused person is of unsound mind and incapable of making his defence; and thereupon the trial

* Criminal Referred Case, No. 48 of 1873, from an order of the Additional Session Judge of Howrah, dated the 8th January 1873.