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guardian, to whom the ward could apply, in whom the Court and the ward could confide, and whose duty it would be to communicate to the Court any matter which might arise.

Appeal dismissed.

Agents for appellant : Messrs. *Watkins* and *Lattey*.

Agents for respondents : Messrs. *Ellis* and *Ellis*.

ANUND LOLL DASS (PLAINTIFF) *v.* JULLODHUR SHAW AND ANOTHER (DEFENDANTS).*

[On appeal from the High Court of Judicature at Fort William in Bengal.]

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Act VIII of 1859, *ss.* 235 *&* 240—*Execution—Private Alienation.*

The prohibition against private alienation of attached property contained in s. 240, Act VIII of 1859, relates only to alienation which would affect the creditor who obtained the attachment.

THIS was an appeal from a decision of the Calcutta High Court, dated 31st July 1868, affirming a decision of Norman, J., in the original civil jurisdiction, dated 20th December 1867 (1).

Russickchunder Soor on 10th March 1866 mortgaged the property in dispute to Parbuttychurn Soor to secure Rs. 7,000 due, 10th September 1866.

On the 18th September 1866, Nettychunder Paul got a decree against Russickchunder for Rs. 1,100 odd.

On the 26th September, Baneymadhub Banerjee also obtained a decree for Rs. 3,000.

On the 28th September, Inderchunder Johurry obtained a decree for Rs. 1,500, and on the same day obtained an order for attachment of the property.

On the 29th September, Nettychunder obtained an order for attachment in his suit ; but, having made a mistake in the description of the property, the writ was returned unexecuted.

* *Present* :—SIR JAMES W. COLVILE, SIR M. SMITH, SIR R. P. COLLIER, and SIR LAWRENCE PEEL.

(1) 2 B. L. R., F. B., 49.

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On the 13th November, Russickchunder agreed to sell the property to the respondents.

On the 17th November, Baneymadhub Banerjee obtained an order for attachment in his suit.

On the 19th November, the sale to the respondents was effected, and the mortgage to Parbuttychurn Soor, and the judgment-debts due to Inderchunder Johurry and Baneymadhub Banerjee were paid off.

On the 21st November, Nettychunder Paul obtained a second order for attachment, and the property was, on the 22nd November, attched by the Sheriff.

On the 27th and 28th November, the Sheriff received notice to remove the attachments in Inderchunder Johurry and Baneymadhub Banerjee's suits.

On the 11th January 1867, an order was made in Nettychunder Paul's suit for the sale of the property, and on the 21st February (1), it was sold by the Sheriff to the appellant.

On the 18th July 1867, the appellant, not being able to obtain possession, filed his plaint against the respondents, impeaching their title on the ground that the private sale, having been effected while the two attachments were in force, could pass nothing.

A question as to the *bonâ fides* of that private sale was decided in the respondents' favor. On the 20th December 1867, Norman, J., dismissed the suit, thereby supporting the validity of the private purchase; and on appeal to a Full Bench (Peacock, C.J., L. S. Jackson, Macpherson, Markby, and Mitter, JJ.), it was held by a majority (Markby, J., dissenting) that the decision of the first Court was right.

The judgments are set out at length in the report (2).

Sir R. *Palmer*, Q. C., and Mr. *Doyne* for the appellants.—The question is, does the absolute prohibition under the attachments operate for the benefit of all creditors, so as to prevent a private purchaser acquiring a title to an estate, or is the prohibition only such as prevents an alienation to the prejudice of the parti-

(1) In the report of the case before stated to have been on the 22nd of the High Court, the Sheriff's sale was February.

(2) 2 B. L. R., F. B., 49.

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cular execution-creditor? Under s. 206 of Act VIII of 1859, money payable under a decree is to be paid into Court, and no adjustment of a decree is to be made save through the Court. The object is to guide all persons interested as subsequent execution-creditors in the enforcing of their claims. The recognition here of a settlement, without the intervention of the Court, is contrary to the letter and spirit of the Act. Nettychunder's first attachment was inoperative from a mere mistake, whereby he lost his priority, but he would still be entitled to have his decree protected. The words of s. 235 show how stringent the words of the prohibition are to be, and s. 240 declares any alienation to be null and void. S. 243 shows that a private sale, in order to be good, must be sanctioned by the Court, and s. 245 directs what is to be done. The reference by Norman, J., to Bishop's leases has nothing to do with the present point; the question there being whether the alienor would be estopped, and the case cited by him of *Ranee Surnomoyee* v. *Maharaja Sutteeschunder Roy Bahadoor* (1) relates to a wholly different question. It is not contended that the alienor would not be estopped. There would appear to be no answer to Markby, J.'s decision. There is no bankruptcy law save in the presidency towns, and it is the proper policy of the law to prevent private arrangements by way of preference which may injure creditors. The property is in the custody of the law, and it can only be relived from such custody by an act of the Court. S. 243 seems to have bee entirely overlooked by the Court. When the property has once been attached, it is to remain until sold or released by order of the Court. All execution-creditors have an interest under ss. 270, 271 in the proceeds after satisfaction of the first executed attachment.

Mr. *Field*, Q.C., and Mr. *Leith* for the respondents were not called upon.

Their LORDSHIPS gave the following judgment:—

The facts under which this question arises may be thus, shortly stated:—*A* obtains an execution against his debtor

(1) 10 Moo. I. A. 123.

in the form of an attachment against the debtor's real property. The debtor, with the consent of *A*, makes a private sale of the property, and out of the proceeds satisfies the debt, but no application is made to the Court for the confirmation of the sale, or for the removal of the attachment, and the attachment still remains, at all events formally, in force. Subsequently *B*, another creditor, obtains an attachment upon another judgment. He proceeds to a judicial sale, treating the former sale as void; and the question is whether the purchaser under the second sale has a good title and is entitled to say that the prior sale was to all intents and purposes void as against him?

Their Lordships adopt the view taken by the late Norman, J., in the first instance, and by the majority of the Court above, including the Chief Justice, upon appeal. The question turns mainly upon the interpretation of two sections of Act VIII of 1859, under the head "Execution of decrees for money by attachment of property," and in construing these sections, it should be borne in mind that we are not dealing with provisions prescribing the mode of administering property amongst creditors generally, but with provisions prescribing the rights of particular creditors who have obtained judgments and executions.

Now, the sections alluded to are in these terms. S. 235:—"Where the property shall consist of lands, houses, or other immoveable property, the attachment shall be made by a written order prohibiting the defendant from alienating the property by sale, gift, or in any other way, and all persons from receiving the same by purchase, gift, or otherwise." S. 240 says:—"After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, or otherwise, and any payment of the debt or debts, or dividends or shares to the defendant during the continuance of the attachment shall be null and void."

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The question is whether those words, "any private alienation of the property attached, whether by sale, gift, or otherwise, shall be null and void," are to be taken in the widest possible sense as null and void against all the world, including even the vendor, or to be taken in the comparatively limited sense attached to them by the Courts in India? Their Lordships adopt the language of the Chief Justice, who expresses his opinion that "the object was to make the sale null and void so far as it might be necessary to secure the execution of the decree; it relates only to an alienation which would affect the creditor who obtained the attachment." That appears to their Lordships to be the true meaning of the section. It could scarcely be held, in fact it was scarcely maintained in argument, that a sale made to a *bonâ fide* purchaser by the vendor could be set aside by the vendor himself; the words must, therefore, necessarily be read with some limitation. It appears to their Lordships that their construction must be limited in the manner indicated by the Chief Justice, on the ground that they were intended for the protection of the creditor who had obtained an execution, and not for the protection of all persons who at any future time might possibly obtain executions.

Reference has been made to s. 271, which is to this effect:—"If, after the claim of the person on whose application the property was attached has been satisfied in full from the proceeds of the sale, any surplus remain, such surplus shall be distributed rateably amongst any other persons who, prior to the order for such distribution, may have taken out execution of decrees against the same defendant, and not obtained satisfaction thereof." This section only applies where there has been a judicial sale, and appears to their Lordships to have little or no bearing on the question in the present case, which is, whether or not under the circumstances a private sale was valid.

Their Lordships understand that the Courts in India have generally proceeded upon the view taken by the Chief Justice and the majority of the Court, and would be unwilling to interfere with an established course of practice unless they came to a very clear opinion that it was wrong.

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Under these circumstances their Lordships will humbly advise Her Majesty that the decree of the High Court should be affirmed, and this appeal dismissed with costs.

Appeal dismissed.

Agent for appellant : Mr. *Barrow*..

Agent for respondents : Mr. *Wilson*.,

ALEXANDER JOHN FORBES (PLAINTIFF) *v.* BABOO LUTCHMEPUT SINGH AND OTHERS (DEFENDANTS).

[On appeal from the High Court of Judicature at Fort William in Bengal.]

P. C.* 1872 *Jany.* 26.

Sale of Sub-tenure for Arrear of Rent—Encumbrances—Regs. VII of 1799 (1), *VIII of* 1819, *I of* 1820, *and VIII of* 1831 (2)*—Act VIII of* 1835 (3)*—Act X of* 1859, *s.* 105 (4).

Where a sub-tenure had been granted, but no power was reserved to the grantor in the sunnud to sell the tenure free from encumbrances in case of default in payment of rent, *held* that, in a sale for arrears of rent under Reg. VIII of 1831, the purchaser did not take free from encumbrances created by the grantee.

The decision in *Shahabooddeen* v. *Futteh Ali* (5) affirmed.

THIS was an appeal from a judgment passed on review by the High Court of Bengal on the 26th April 1867. Some time previous to 1793, certain talooks were granted by way of *istemrar* to one Hossein Reza and his descendants at a fixed jumma of Rs. 2,291. On the 13th March 1850, Shah Ali Reza, being then the holder of the talooks, made a conditional sale of them to one Forbes to secure re-payment of a loan. Forbes took steps to foreclose on the non-payment of the debt, and having absolutely foreclosed obtained a decree for possession on 18th December 1854.

* *Present* :—SIR JAMES W. COLVILE, SIR JOSEPH NAPIER, SIR MONTAGUE SMITH, AND SIR LAWRENCE PEEL.

(1) Reg. VII of 1799, ss. 1 to 20, repealed by Act X of 1859.

(2) Reg. VIII of 1831, repealed by Act X of 1859.

(3) Act VIII of 1835, repealed by Bengal Act VIII of 1865.

(4) See Bengal Act VIII of 1869, ss. 59 to 61

(5) Case No. 992 of 1866; 13th March 1867.