

Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice Bayley, Mr. Justice L. S. Jackson, Mr. Justice Macpherson, and Mr. Justice Mitter.

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KAIM ALI JAWARDAR v. LAKHIKANT CHUCKERBUTTY.*

Aug. 6.

Cross-Decree—Set-off—Purchase of a Decree—Act VIII. of 1859, s. 209.

The purchaser of a decree held by A., against whom B. holds a cross decree, takes it subject to a set-off on account of B.'s decree.

KAIM ALI and Ashraffunnisa had cross-decrees one against the other in the same Court. Lakhikant Chuckerbutty purchased the rights and interests of Ashraffunnisa in her decree against Kaim Ali. Lakhikant subsequently proceeded to execute the decree of Ashraffunnisa against Kaim Ali, who claimed as set-off the amount of his own cross decree against Ashraffunnisa. Both the lower Courts disallowed the claim of Kaim Ali, and held that Lakhikant was entitled to execute the decree he had purchased without any such set off. The case came on before L. S. JACKSON and HOBHOUSE, JJ., by whom the following question was referred for the opinion of a Full Bench:

See also
Sec. 216;
Act X of
1877.
2 B. L. R.
(A.C.) 110.
6 B. L. R.
(App.) 125.
13 B. L. R.
489.
3 B. L. R.
(A.C.) 114.
Beng. Supp.
503.
3 N. W. P.
104.

“Whether a party taking by assignment a decree obtained by A. against B., does or does not take it subject to a set-off on account of a cross-decree in the same Court obtained by B. against A.?”

The question was referred by the learned Judges with the following remarks by

JACKSON, J.—There is, in support of the view taken by the Judge, a decision of a Division Bench of this Court, *Sheik Raziuddin v. Sheik Jehangir* (1). I was one of the Judges who passed that decision, the soundness of which has since been questioned, and upon further consideration I am myself inclined to think that the decision was mistaken, at least upon the grounds on which we based it. That decision, I think was right upon the facts of the case; but the principle upon which we decided, I think, was erroneous. The point was on a subsequent occasion

* Miscellaneous Appeal, No. 613 of 1867, from a decree passed by the Officiating Judge of Jessore, affirming a decree of the Principal Sudher Ameen of that district.

(1) 5 W. R. (M. B.), 22.

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referred for the opinion of a Full Bench, but was not [decided, inasmuch as it was found that for other reasons the two decrees were not capable of being set-off one against the other. In this case, however, the point clearly arises, and it now appears to me that Lakhikant purchasing the rights and interests of Ashraffunnisa, was entitled to execute her decree, in like manner and to the same extent as she might have done, and not otherwise or further. It is admitted that, when he made the purchase, there was outstanding against Ashraffunnisa the cross-decree of the same Court, which was ultimately affirmed on appeal; consequently, both at the time of his purchase, and at the time when he made the application to execute Ashraffunnisa's decree stood subject, within the meaning of section 209, to a set-off of the cross-decree. I am, therefore, at present inclined to think that the appellant before us ought to succeed, but as the decision which I have referred to has not been overruled, I think the case must be referred for the opinion of a Full Bench. There is a decision to the opposite effect by *Lock and Macpherson, JJ.*,—*Nanda Kumar Bakshee v. Kunja Kishor Roy* (1).

Mr. Allan and Baboo Banish Dhar Sen for appellant.

Baboos Khettra Nath Mookerjee and Laksi Charan Bose for respondent.

The opinion of the learned Judges upon the question proposed to them was delivered by

PEACOCK, C. J.—The case is almost too clear for argument. We entirely agree with the view which was expressed by Mr. Justice Jackson, when the case was referred for the opinion of a Full Bench, viz., that the purchaser of the rights and interests of the decree-holder was entitled to execute the decree purchased, in like manner and to the same extent as the original decree-holder might have done, and not otherwise or further; and, consequently, that the purchaser took it subject to the rights of the judgment-debtor to set-off his cross-decree.

(1) 6 W. R. (M. R.), 73.