where the property sought to be taken was books of account, and it was refused on the ground that the property was not in its nature saleable. Mr. Marindin has referred to a case before the Full Bench, *Cowar Rajkumar Roy* v. *S. M. Kadombini Debi* (1), in which it was held by all the Judges, that not only property could be attached, but any undivided share an execution-debtor might have in property might be attached; and it was truly inferred from that that the word "property" must be held as extending beyond things existing and tangible. I should be bound by that judgment, in which I entirely concur. The tangibility of the property, or its existence in specie, has nothing to do with the matter. A debt is as incorporeal as a share in a house. The section suggests one limitation, and the decision of Westropp, J., suggests another. Even if you could call these assets property it is impossible to call them property belonging to the defendant. What now belongs to the defendant is a share in the stock-in-trade and in the outstandings. The sum which may ultimately be found due can hardly be said to belong to the defendant before it is known what it is, or whether there will be anything. The words of the Bombay decision are, I think, that books are not property which is in its nature saleable, by which Westropp, J., does not mean that it is physically impossible to sell it, for the books could be sold, but that they are not sold, according to the ordinary dealings of persons, I do not think it would be in accordance with the ordinary dealings of persons to sell possible sums of money which might be found due to a person after accounts have been taken. I do not mean that the Court has not a discretion after attachment to consider whether it will order a sale; but sale is the end of every attachment, and the Court ought not to issue attachment against any property which, from its very nature, ought not to be sold; and I think that anything so indefinite as the rights of this judgment-debtor ought not to be sold. I look upon this as quite distinct from a share in a railway company. The rights of shareholders are the creation of the Statute incorporating the Company, and by the words of that Statute and by common usage, they are made the subject of sale. The case coming nearest to this is that of an equity of redemption. In *Brojanath Kundu Chowdry* v. *S. M. Gobindmani Dasi* (1), Phear, J., says: "I had been disposed always to take the view that the attachment sections of Act VIII do not apply to such property as an equity of redemption; and I have been told that Mr. Justice Norman, on one occasion, formally pronounced an opinion to that effect. But I abstain from judicially deciding that point now." I must say I should fully concur in that doubt, and have only surrendered the doubt to the words of Section 271, Act VIII of 1859, "provided that when property is sold subject to a mortgage, the mortgagee shall not be entitled to share in any surplus arising from such sale." But for those words 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*.

(1) 4 B. L. R., F. B., 175

B. L. R. Vol. V, p. 386.

(Original Civil.)

The 7th April 1870.

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 attachment 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.

(1) 4 B L. R., O. C., 83.

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 Hukapatti, 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.

Mr. Kennedy and *Mr. Phillips* for the claimant 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 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 attachment 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 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 possession thereof, the attachment shall be made by a written order, prohibiting the person in possession from giving over the property 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-creditor 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.*