

of the plaintiff. This property had been previously attached by another judgment-creditor of the same defendant, but he took no steps for selling the property. The present plaintiff, however, carried his attachment into effect by a sale of the property, duly made, by order of the Court, upon his application. The Munsif referred the question—“ Whether Muhammad Labbai Sahib, who first attached the property, but did nothing more, or the present plaintiff who carried his attachment into effect, is entitled to be first paid out of the proceeds of the sale ?”

1871.
August 14.
R. C. No. 50
of 1871.

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—We are of opinion that the decree-holder who first attached the property of the judgment-debtor did not forfeit his prior right to payment under Section 270 of the Code of Civil Procedure by delaying to obtain an order for the sale of the property upon his attachment.

The valid charge upon the property created by his attachment was subsisting when the other decree-holder procured the sale of the property, and there is nothing in Section 270 to restrict its application to a sale at the instance of the decree-holder who first attached the property. It gives the prior right in general language “ whenever property is sold in execution of a decree.” A decree-holder who sues out a second attachment and sells the property, takes the risk of there being no surplus proceeds after payment of the debt of the creditor first attaching.

APPELLAE JURISDICTION(a)

Criminal Petition No. 287 of 1871.

TOTI CHENGAN.....*Petitioner.*

In computing the time during which it is competent to a defendant to appeal against the sentence of a Magistrate the number of days taken by the Court to prepare a copy of the sentence should be omitted.

THIS was an application under Section 404 of the Criminal Procedure Code, praying the High Court to revise the

1871.
November 2.
C. P. No. 201
of 1871.

(a) Present ; Scotland, C. J and Holloway J.

1871. proceedings of the Court of Session of Chittur, dated 5th
October 2. August 1871, rejecting an appeal preferred against the
P. No 287 decision of the Assistant Magistrate of North Arcot in case
of 1871. No. 40 of the Calendar for 1871 on the ground of its having
 been presented out of time.

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—In this case we are of opinion that the Session Judge committed an error of procedure in not receiving the Petitioner's appeal and disposing of it on the merits. The sentence appealed from was passed on the 26th June. Copy of that sentence was applied for on the 11th July and stamp paper furnished on the 13th idem. The copy was ready for delivery on 19th but was not actually delivered until the 24th. The appeal was presented on the 27th and ejected, because no ground had been shown for the non-presentation within the thirty days allowed by law. If the period between the 13th and 19th be deducted, in accordance with the practice of deducting every day of delay in obtaining copies not attributable to the party, the appeal was within time. The above rule of computing the period of appeal was introduced by Act XXXV of 1837 (repealed by Act X of 1861) and has continued in force under a rule of the late Sadr Court in the case of appeals from decrees, but it has been adopted and recognized as a general rule of practice in the case of appeals from sentences passed on criminals, and until such practice is altered by an order of this Court it must be observed. The petition of appeal should now be received and disposed of on the merits.
