

representative, that the monies "received or realized" under certificate exceed the amount sworn to on the granting of it, and in case of default on the part of the representative by not filing such statement within the time allowed for that purpose. Until cancellation has taken place on one of those grounds the certificate remains in full force as proof of the representative right to sue or obtain execution whatever be the amount of the debt sought to be realized. This opinion affords an answer to the three questions.

1871.
March 3.
R. C. No. 10
of 1871.

APPELLATE JURISDICTION (a)

Referred Case No. 11 of 1871.

Section 89 of the Code of Civil Procedure renders an attachment before judgment ineffectual as a bar to process of execution against the property attached in satisfaction of a decree in another suit, whether obtained before or after the attachment.

CASE referred for the opinion of the High Court by Arnáchala Áyyar, the District Munsif of Tinnevely, in Suits Nos. 38 and 42 of 1871.

1871.
March 13.
R. C. No. 11
of 1871.

The plaintiff in Original Suit No. 42 of 1871 on the District Munsif's side of the Court, applied for attachment before judgment of defendant's moveable property, under Section 81 of the Civil Procedure Code. The property was accordingly attached and sold, and the sale proceeds held in Court in deposit pending the final disposal of the suit. Meantime another plaintiff brought Suit No. 38 of 1871 on the Small Cause side, against the same defendant, and obtained judgment subsequently to the date of attachment before judgment in Suit No. 42. The latter plaintiff asked under Section 237 of the Civil Procedure Code, the money in deposit on account of Suit No. 42 to be attached and paid her.

On these facts the Munsif referred the question,— Whether the attachment after judgment in Suit No. 38, made subsequent to the date of attachment before judgment in Suit No. 42, affects the right of the latter plaintiff to have the property attached made available for his debt, in case he also obtains judgment.

No counsel were instructed.

(a) Present : Scotland, and Innes, J.

1877.
Arch 13.
S. C. No 11
of 1871.

The Court delivered the following.
JUDGMENT :—We are of opinion that Section 89 of the Code of Civil Procedure renders an attachment before judgment ineffectual as a bar to process of execution against the property attached in satisfaction of a decree in another suit, whether obtained before or after the attachment. In the present case, therefore, if the property attached had remained under attachment, the decree-holder would clearly have had a right to enforce the sale of it in execution of his decree. But it has been sold by order of the Court (whether rightly or wrongly it is not necessary here to consider, but we may point out that the Ruling of the Sadr Court quoted by the District Munsif refers to attachment in execution of decrees), and, as respects the claim of the decree-holder, the proceeds of the sale in deposit in the Court must be regarded as representing the property sold. It is, therefore, money in Court which may become payable to the defendant in the event of a decree not being obtained in the suit in which the property was attached, consequently the decree holder's application to attach the money under Section 237 was, we think, regular, and he is at liberty after attachment to apply for an order for the payment out of the money, or any part of it, in satisfaction of the decree, under Section 242.

APPELLATE JURISDICTION (a)

Special Appeal No. 417 of 1870.

MOPARTI PITCHI NAIDU.....*Appellant.*

VUPPALA KONDAMMA.....*Respondent.*

A Petition sent by post is not a substitute for the presentation of a plaint as required by Section 50 of Madras Act VIII of 1865.

1871.
Arch 13.
A. No. 417
of 1870.

THIS was a Special Appeal from the decision of J. R. Cockerell, the Civil Judge of Nellore, in Appeal Suit No. 20 of 1869, reversing the decree of the Assistant Collector of Nellore in Summary Suit No. 14 of 1868.

The suit was brought under Section 50 of the Rent Recovery Act (Madras Act VIII of 1865) for release of a bullock attached by plaintiff's landlord, and for damages for the injury sustained by the dstraint of the animal.

The Assistant Collector gave judgment for the plaintiff.

(a) Present : Scotland, C. J. and Innes, J.