

1878  
 EMPRESS  
 v.  
 AMIRUDDIN. the person so intended to be saved from punishment had committed the offence or not. I think, therefore, that the conviction in this case was right and that the appeal must be dismissed.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice L. S. Jackson and Mr. Justice Cunningham.*

1878  
 July. 16.

NILKUNTO DEY (ONE OF THE DEFENDANTS) v. HURRO SOONDEREE  
 DOSSEE (PLAINTIFF).\*

*Mode of Attachment in Execution of Decree—Malikana Rights payable for ever—Act VIII of 1859, ss. 235, 236, 237.*

*A* and *B* were entitled to receive annually and for ever a specified amount by way of malikana rights from the Collector as compensation for their extinguished rights in lakhiraj lands. In execution of a decree, *C*, on 13th September, purported to attach, under s. 237 of Act VIII of 1859, *A*'s share in such specified amount. Subsequent to this attachment, namely, on 23rd September, 1873, *A* and *B* mortgaged their rights to the plaintiff. In a suit brought by him against *A* and *B* and *C*,—*held*, that attachment under s. 237 was not applicable to a right to receive money for ever; that such an attachment is only good so far as it relates to any specific amount, which may be set forth in the request to the officer in whose hands the moneys are, as being then payable or likely to become payable, and that the attachment in question was therefore invalid.

*Semble.*—The attaching-creditor should have proceeded under s. 235 or s. 236. In either of such cases the defendant, the person to whom the money was payable, would be entitled to notice that he was not at liberty to alienate his rights.

THIS was a suit brought against three defendants to recover a sum of money due by the defendants Nos. 1 and 2 under a mortgage dated 9th Assin, 1281 (23rd September, 1873). The plaintiff charged defendant No. 3 with having purchased part of the mortgaged property in execution of a money decree obtained by him against defendants Nos. 1 and 2. Defendant No. 3, in his written statement, admitted the attachment of the property

\* Special Appeal, No. 690 of 1877, against the decree of L. R. Tottenham, Esq., Judge of Zilla Midnapore, dated the 19th March, 1877, modifying the decree of Baboo Debendro Lal Shome, Sudder Munsif of that district, dated 5th January, 1877.

on 13th September, 1873 in execution of his decree, and subsequent auction-sale at which he himself had purchased the property in dispute, but denied all knowledge of the plaintiff's mortgage, and asserted that this auction-purchased property was in no way liable for it. The property mortgaged would appear to have been certain malikana rights which the defendants Nos. 1 and 2 had to receive annually for ever, in a specified amount, from the Collector as compensation for their extinguished rights in lakhiraj lands. It would also appear that a quarter share of this specified amount payable to defendant No. 1 had been attached by defendant No. 3 in execution of his decree on 13th September, 1873 and prior to the plaintiff's mortgage. The attachment was made under the provisions of s. 237 of Act VIII of 1859, and the Court of first instance, being of opinion that the specified amount or malikana rights were money in the hands of a Government officer, held the attachment to be good. The lower Appellate Court reversed this decision, the learned Judge considering that the property attached was a sort of interest on land or immoveable property; that the right to receive it for ever was something more than money in the hands of the Collector; and that a mere notice under s. 237 to the Collector without any further notice to the debtor or the public could not, under s. 240, render any alienation of the right to receive the pension or malikana null and void. He also held that the auction-purchaser bought an encumbered property, and that he must either pay the encumbrance or submit to have it sold.

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Defendant No. 3 now appealed to the High Court.

Baboos *Srinath Doss* and *Mohini Mohun Roy* for the appellant.

Baboos *Mohesh Chunder Chowdhry*, *Hem Chunder Bonnerjee*, and *Porna Kalee Mookerjee* for the respondents.

The judgment of the Court was delivered by

JACKSON, J.—The question which we have to determine in this case relates to the sufficiency or insufficiency of an attach-

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ment which the defendant, special appellant, had effected, and in respect of which he seeks to invalidate a mortgage set up by the plaintiff of certain rights which the other defendants, Nos. 1 and 2, had to receive in a specified amount from the Collector annually as compensation for their extinguished rights to certain lakhiraj land. The attachment was made under s. 237 of the repealed Code of Civil Procedure, and if that attachment was sufficient, then by s. 240 the mortgage made during the attachment was invalid, and the purchaser at the execution-sale would have acquired a right to receive such money free of any such mortgage. It is contended that it is an attachment duly made under s. 237, inasmuch as the property consisted of money in the hands of an officer of Government, which was or might become payable to the defendant or on his behalf, and that in such a case all that need be done for the purpose of attaching the property is to make a request to the officer in whose hands the money is, that the money may be held subject to the further order of the Court. It seems to me clear that an attachment of that kind is only good so far as it relates to any specific amount which may be set forth in the request as being then payable or likely to become payable to the defendant, and that that mode of attachment is not applicable to a right to receive money for ever, such as is in question in the present case. It may be doubtful whether, in the circumstances of this case, the attaching-creditor ought to have proceeded under s. 235 or under s. 236 of the Code. In either of these cases the defendant, the person to whom the money was payable, would be entitled to a notice, and it seems to me clear that this was a case in which the debtor ought to have had a notice that he was not at liberty to alienate his rights. All that we need decide, however, is whether s. 237 will govern the attachment of a right to receive money for ever. It appears to me that it will not. The decision of the Judge is, therefore, correct, and the special appeal must be dismissed with costs.

*Appeal dismissed.*