

1869
Feb. 11.

In the matter of The Bombay Joint Stock
Corporation.

In re The Sheriff of Bombay.

Sheriff—Attachment of property—Poundage—Compromise.

Where property is attached by the Sheriff after judgment and the parties come to a compromise before the Sheriff sells any of such property, the Sheriff is only entitled to poundage on the amount received by the execution creditor in compromise of his claim.

This was a special case stated for the opinion of the High Court under the provisions of Chapter VII. of the Code of Civil Procedure.

The case stated that one Henry Vears was a contributory of the Joint Stock Corporation (Limited) and in that capacity indebted to the liquidator of the Corporation, and that in pursuance of an order of Arnould, J. of the 31st of August 1868 a share in the Colaba Company, standing in the name of Vears was attached by the Sheriff on the 10th of September following, at the instance of the liquidator.

On the 6th of October it was ordered that a warrant should issue directing the Sheriff to sell the share: and on the 20th October a warrant for the sale of the share was issued accordingly. On the 24th of October this warrant was lodged for execution at the Sheriff's office by the liquidator, and the fees for entry were then duly paid, but, before the proclamation for sale was made, the liquidator compromised the claim of the corporation against Henry Vears for a smaller amount than was actually due.

On these facts the Sheriff contended that he was entitled to poundage on the full amount of the original debt for which attachment had issued. The liquidator contended that, as the Sheriff did not actually sell the property, he was not entitled to any poundage. He further contended, in case the Court should be of opinion that the Sheriff was entitled to some poundage, that the Sheriff was entitled to poundage on the amount actually recovered by the liquidator and no more.

The case came on for argument before ARNOULD, J. on the 11th of February 1869.

White for the liquidator. The Sheriff is only entitled to poundage on the amount for which the debt has been compromised. The principle is laid down by Alderson B. in *Rex v. Robinson*. (a) He says, "the very principle on which the Sheriff is entitled to poundage shows that he is not entitled to more than on the sum actually received. What the Crown actually obtains, though not under the *direct* compulsion of the process, is considered as being in fact the amount levied by the hands of the Sheriff. If therefore the amount received by the Crown is to be taken as the criterion for one purpose it must be so also for another." *Alchin v. Wells* (b) will be relied on by the other side, but that case was virtually overruled by *Rex v. Robinson*. The latter case does not seem to have been brought to the notice of the Appeal Court in the case of *Vinayak Vasudev v. Ritchie Stuart* (c).

Mayhew for the Sheriff.—In *Rex v. Robinson* the Sheriff was a party to the compromise which is not the case here; and the same peculiarity distinguishes it from *Alchin v. Wells*, which was cited and considered as good law in the case of *Vinayak Vasudev v. Ritchie Stuart*, which is a binding authority in this case.—*Miller v. Abbot* (d) is to the same effect.

ARNOULD, J.—I am very strongly against you, Mr. Mayhew. The rule stated by Baron Parke in *Rex v. Robinson* is, it appears to me, supported on very good sense. There is nothing to prevent a creditor from realising by compromise instead of by sale; but if the contention for the Sheriff were allowed to prevail it would often be impossible for him to do so. I think the claim put forward by the Sheriff is a monstrous one. The Decree is that the Sheriff is entitled to poundage on the amount actually received by the creditor by way of compromise. These will be no costs on either side.

Attorneys for the Liquidators.—*Keir, Prescott, and Winter*.
Attorney for the Sheriff.

(a) 2 Cr. M. & R. 337. (b) 5 Term Rep. 470.

(c) 4 Bom. H. C. Rep. O. C. J. 139.

(d) 1. Stra. Mad. Ca. 182.

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