

MEGJI HANSRAJ *et al.* *Plaintiffs.* 1871.
 RA'MJI JOITA' *Defendant.* Dec. 8, 11.

Attachment of Debt—Equitable Assignment prior to Attachment—Notice—Assignee for Value without Notice—Judgment-Creditor—Attachment on Funds of Debtor, expected to reach hands of a third person, invalid—Assignment of Funds, expected to reach hands of a third person, valid—Stamp.

A creditor, who attaches a debt due to his judgment-debtor, is not in the same position as an assignee for value of such debt without notice of a prior assignment, but in respect to prior assignments stands in no better position than his judgment-debtor. An assignment prior to attachment that is good against the judgment-debtor is also, as a general rule, good against his attaching creditor.

Notice to the holder of funds is not necessary to complete, *as against the assignor*, an equitable assignment of such funds.

In August 1870 Rámji Joitá signed and gave to Messrs. F., S., & Co. a letter addressed to Messrs. Ewart, Latham, and Co., by which he "requested them to pay over to Messrs. F., S., & Co. any surplus proceeds of his consignment of one hundred bales per 'Aurora,' after recovery from the underwriters of the amount due under a policy of insurance" (which had been effected on the hundred bales), after making certain deductions.

This letter was given to Messrs. F., S., & Co. in consideration of a pre-existing debt.

On the 8th of August 1870 Messrs. F., S., & Co. sent the letter to Messrs. Ewart, Latham, and Co., with a request that they should act upon it.

The surplus proceeds of the insurance of the one hundred bales reached Messrs. Ewart, Latham, and Co. on the 26th of June 1871, and were attached in their hands by a judgment-creditor of Rámji Joitá before they were paid over to Messrs. F., S., & Co.

Held. That Rámji Joitá had validly assigned the surplus proceeds of the hundred bales to Messrs. F., S., & Co., and that such assignment was valid as against subsequent attaching creditors.

Semle. That an attachment upon such surplus proceeds before they reached the hands of Messrs. Ewart, Latham, and Co. from the underwriter would have been invalid.

Held. That a letter by which a *chose in action* (a debt) was equitably assigned did not require a stamp where the *chose in action* was not in British India at the time of the assignment.

THIS was a summons taken out by Megji Hansráj and his co-plaintiff in the above suit, calling upon Messrs. Ewart, Latham, and Co. to show cause why they should not pay to the plaintiffs the amount of their decree and costs, amounting to a sum of Rs. 2,025, out of a sum of Rs. 5,149 in the hands of

1871.
 MEGJI
 HANSRAJ
et al.
 v.
 RA'MJI
 JOITA'

Messrs. Ewart, Latham, and Co., and alleged to be due to the defendant Rámji Joitá, as surplus proceeds in respect of a consignment of cotton shipped to England through Messrs. Ewart, Latham, and Co., realised on a policy of insurance effected on that consignment. The facts are fully set forth in the judgment of the court.

The 21st para. of the Affidavit of Mr. Reid, alluded to in the argument of counsel and the judgment of the court, was as follows:—

“After the 23rd of June 1870 I had several interviews with Rámji Joitá, at which I threatened him with legal proceedings unless he gave me security for the repayment of the money advanced to him. One of these interviews took place at my bungalow shortly before the 18th of July 1870. At this interview my partner Walter Lang, my clerk Sorábjí Rustamji, and one Dayarám Manchárám were present. I pressed Rámji Joitá then and there either to pay the money which he owed to us, or to give security for the payment of it, and the said Rámji Joitá then and there distinctly stated that he would assign or make over to us the surplus moneys of his consignment per ‘Aurora’ through Messrs. Forbes and Co. and Messrs. Ewart, Latham, and Co., and that, in order to ensure the payment to us of the said moneys, he would sign letters, to be prepared by us, requesting Messrs. Forbes and Co. and Messrs. Ewart, Latham, and Co. to pay the said moneys to us. The said letters could not be prepared there and then, because, as before stated, the interview took place at my bungalow, and I had not the necessary materials at hand.”

Some time after this interview Rámji Joitá left Bombay, and the letter of the 18th of July was sent after him and signed by him in the Mofussil.

The above summons was, by SARGENT, J., adjourned into court, and was argued before WESTROPP, C. J., and SARGENT, J., on the 8th of December 1871.

Farran, on behalf of Messrs. Ewart, Latham, and Co., showed cause.

The Honourable J. S. White (Advocate General) showed cause on behalf of Messrs. Finlay, Scott, and Co. He argued that, under the circumstances stated in para. 21 of Mr. Reid's Affidavit, and by the letter of the 18th of July 1870, Rámji Joitá had made a valid assignment in equity of all his interest in the surplus proceeds of the consignment made through Messrs. Ewart, Latham, and Co. to Messrs. Finlay, Scott, and Co., long before the attachment laid on these proceeds

by the plaintiffs and the other attaching creditors, and consequently that there was, at the time the attachments were laid on, no interest left in Rámji Joitá on which the attachments could operate; that, in order to render the equitable assignment valid as against Rámji Joitá, notice to Messrs. Ewart, Latham, and Co., after the surplus proceeds had reached their hands, was not necessary, and that the assignment being valid against Rámji Joitá was valid against his attaching creditors, who did not occupy the position of *puisne* assignees of Rámji Joitá for value and without notice of the prior assignment, but stood in the same position as Rámji Joitá himself. He commented on the several cases cited by Bayley, J., in his judgment in the case of *Lálji Ladhá v. Rámji Joitá*,* and argued that that case had been wrongly decided.

Marriott, for the second attaching creditors, Purshotam Lakhmidás and others, relied upon the judgment in *Lálji Ladhá v. Rámji Joitá*. He also contended that if there were an equitable assignment made by Rámji Joitá, it was made by the letter of the 18th of July 1870, as the prior negotiations between Rámji Joitá and Finlay, Scott, and Co. had not resulted in a definite agreement, and that the letter of the 18th of July could not be used as an assignment, as it was not stamped as such.

The Honorable A. R. Scoble followed for the plaintiffs.

Cur. adv. vult.

WESTROPP, C.J. :—The plaintiffs (who are judgment-creditors in this cause of the defendant, Rámji Joitá) obtained, on the 17th of November last, a Judge's summons, calling upon

* In this case *Bayley, J.*, decided that an equitable assignment made by Rámji Joitá to Messrs. Finlay, Scott, and Co., under circumstances similar to those in the present case, was invalid, because no notice of it was given to Messrs. Forbes and Co. before the attachment was laid on by the plaintiff, Lálji Ladhá, as the letter of the 18th of July 1870 was sent to them (Messrs. Ewart, Latham, and Co.) before the surplus proceeds had reached their hands, and, therefore, did not amount to a notice of the assignment. He relied in his judgment upon the following cases :—*Buller v. Plunkett*, 1 John. & H. 441; *Webster v. Webster*, 31 Beav. 393; *Somerset v. Coe*, 33 Beav. 634; *Earl of Suffolk v. Coe*, 36 L. J., Ch. 591. See this judgment, referred to *post*, p. 173.

1871.
MEGJI
HANSRA'S
et al.
v.
RÁMJI
JOITÁ.

1871.
MEGJI
HANSRAJ
et al.
v.
RA'MJI
JOITA'

Messrs. Ewart, Latham, and Co., of Bombay, to show cause (if any they had) why they should not pay to the plaintiffs the amount of the decree and costs in this cause (Rs. 2,025) out of the sum of Rs. 5,149 in their hands, and alleged to be due to the defendant, Ránji Joitá, as surplus proceeds in respect of a consignment of cotton shipped to England by the "Aurora," realised upon a policy of assurance effected on that consignment. The "Aurora" and her cargo were destroyed at a distance of fifty miles from Bombay by fire when on her voyage to England, and under circumstances too well known to need description.

The defendant, being under heavy liabilities (about Rs. 23,000) to Messrs. Finlay, Scott, and Co., of Bombay, under circumstances set forth in an affidavit made by Mr. Reid of that firm, and being much pressed to make good those liabilities, with a view to do so in part, gave to Messrs. Finlay, Scott, and Co. a letter dated the 18th July 1870, but not actually signed by the defendant, Ránji Joitá, until some day intermediate between that day and the 8th of August 1870. It was addressed to Messrs. Ewart, Latham, and Co., of Bombay, and is as follows:—

"MESSRS. EWART, LATHAM, and Co.,

Bombay.

DEAR SIRs,—I have to request that you will pay over to Messrs. Finlay, Scott, & Co. any surplus proceeds of my consignment of 100 bales of cotton per 'Aurora,' after recovery from the underwriters of the amount due under the policy of insurance, and after deduction of the amount drawn against the said consignment and your usual charges.

I remain, &c.,

RA'MJI JOITA'

That letter was on the 8th of August 1870 delivered to Messrs. Ewart, Latham, and Co., inclosed in a letter of the last-mentioned date to them from Messrs. Finlay, Scott, and Co. By letter of the same date (8th August 1870) Messrs. Ewart, Latham, and Co. replied to Messrs. Finlay, Scott, and Co., acknowledging receipt of the two foregoing letters, and promising to place them "on record."

On the 9th of September 1870 a prohibitory order, founded on the decree in this cause, was served on Ewart, Latham, and Co. at suit of the present plaintiffs, attaching the same surplus proceeds. Those surplus proceeds had not at that time reached the hands of Ewart, Latham, and Co., and did not in fact reach them until the 26th of June 1871. For this reason the plaintiffs, rightly supposing that their attachment was abortive (7 Beng. L. Rep. 186), sued out another attachment of the same surplus proceeds by way of prohibitory order, which was served upon Ewart, Latham, and Co. upon the 2nd of October 1871.

In another suit (No. 522 of 1870) brought against the same defendant, Rámji Joitá, Purshotam Lakhmidás, who had obtained a decree for Rs. 4,485 in it, sued out an attachment of the same surplus proceeds by prohibitory order, which was served upon Ewart, Latham, and Co. upon the 2nd of October 1871.

There were certain other attaching creditors of Rámji Joitá, who (as well as those in Suit No. 522 of 1870) have had special notice of the present proceedings. They have not, however, appeared to sustain their claims against the fund the subject of it. It has been stated that their decrees have been otherwise satisfied.

Messrs. Finlay, Scott, and Co. deny that any of the attachments can be sustained as against their claim founded upon the letter of the 18th of July 1870, delivered to Ewart, Latham, and Co. on the 8th of August 1870.

The attaching creditors, who have appeared by counsel, on the other hand, rely upon an elaborate judgment of Mr. Justice Bayley, given in September last, under circumstances in all material points precisely similar to those which exist in the present case. The surplus proceeds in the case before him were those of a policy of insurance upon 150 bales of cotton, consigned by Rámji Joitá to England through Messrs. Forbes and Co., of Bombay. Rámji Joitá had given to Finlay, Scott, and Co. a letter, addressed to Forbes and Co., dated 18th July 1870, directing them to pay over to Finlay, Scott, and

1871.

MEGJI
HANSRAJ
et al.
v.
RÁMJI
JOITÁ.

1871.
 MEGJI
 HANSRAJ
et al.
 v.
 RA'MJI
 JOITA'.

Co. the surplus proceeds of the 150 bales when realised from the underwriters. That letter was the same in form as the letter in this case addressed by Rámji Joitá to Ewart, Latham, and Co. The surplus proceeds did not reach Forbes and Co.'s hands until April 1871, long after Finlay, Scott, and Co. had caused the letter of Rámji Joitá addressed to Forbes and Co. to be delivered to them. An attachment at suit of *Lálji Ladhá et al. v. Rámji Joitá* (Cause No. 285 of 1870) was, subsequently to the surplus proceeds of the 150 bales reaching the hands of Forbes and Co., laid upon these surplus proceeds. That attachment Mr. Justice Bayley upheld against the claim of Finlay, Scott, and Co., although the letter of assignment was prior in date to the attachment. His decision seems to have rested chiefly on the ground that the notice which Finlay, Scott, and Co. gave of their claim to Forbes and Co. was abortive, because there was not then any debt due from Forbes and Co. to Rámji Joitá, as the surplus proceeds of the 150 bales had not then reached Forbes and Co. He also appears to have thought that the validity of the assignment by Rámji Joitá to Finlay, Scott, and Co. of those surplus proceeds was impeachable under the Stat. 13 Eliz., c. 5.

In the present case, counsel for Finlay, Scott, and Co. admit that the decision of Mr. Justice Bayley is in point as a precedent, but argue that the decision itself is at variance with prior and well-established authorities.

My brother Sargent, before whom this summons came in the first instance, under the above circumstances, adjourned it into court for argument before two Judges. It was, accordingly, argued before him and myself on Friday last.

A creditor may "under his judgment take in execution all that belongs to his debtor, and nothing more. He stands in the place of his debtor. He only takes the property of his debtor subject to every liability under which the debtor himself held it." So spoke Vice-Chancellor Wigram in *Whitworth v. Gaugain* (3 Harc, 416, 425, affirmed on appeal by Lord Cottenham, C., 1 Phillips, 728). The Vice-Chancellor

continued: "First take the case of an ordinary trust. It could not for a moment be contended that this Court would not protect the interest of the *cestui que trust* against the judgment-creditor of the trustee. The judgment of Lord Cottenham in *Newlands v. Paynter* (a) is decisive upon that point, and the other cases cited at the bar prove the same thing. Secondly, take the case of a purchaser for value before conveyance. *Lodge v. Lyseley* (b) is an authority, if authority could be wanting, to show that the equitable interest of such a party will be preferred in equity to the claim of the judgment-creditor of the vendor. Again, take the case of an equitable charge to pay debts, or legacies, or any other equitable interest except that of an equitable mortgagee, and I apprehend the right of the equitable incumbrancer to be preferred to the judgment-creditor of the debtor, in whom the legal estate of the property charged might be, will be, as indeed it properly was, admitted. And if such equitable interests are thus protected, upon what principle is the equitable mortgagee to be excluded from the like protection? Unless I misunderstand the report of the case of *Williams v. Graddock* (c), the counsel, as well as the Court, were of opinion that an interest by way of equitable mortgage was entitled in this Court to the same protection against judgments as other equitable claimants." And so, accordingly, it was held in that case of *Whitworth v. Gaugain*, a decision of which Lord St. Leonards, in *Abbott v. Stratten* (d), expressed his approval.

1871.
MEGJI
HANSRAJ
et al.
v.
RAMJI
JOITA.

Inasmuch, then, as the judgment-creditors can only by their attachments take the property of their debtor, Rámji Joitá, subject to all equities which would affect it in his hands, the question which presents itself for our consideration is whether there was, previously to the attachments relied upon, an equitable assignment by Rámji Joitá to Finlay, Scott, and Co. of the surplus proceeds of the one

(a) 4 Myl. & Cr. 408. (b) 4 Sim. 70.

(c) 4 Sim. 316. See also *Alexander v. Crosby*, 1 Jo. & Lat. 670, 671, by Lord St. Leonards.

(d) 3 Jo. & Lat. 603.

1871.
 MEGJI
 HANSRAJ
 et al.
 v.
 RAMJI
 JOITA'

hundred bales, which assignment would have been valid as against himself? If there were such an assignment, there could have been no right, title, or interest of Rámji Joitá upon which the attachments could operate.

Now a good assignment of a chose in action may, in equity, be made even by parol (2 Spence, 856), and it has been argued by Mr. White that the facts disclosed in para. 21 of Mr. Reid's affidavit amount to such a parol assignment to Finlay, Scott, and Co. But we do not think it necessary to resort to para. 21 for an oral equitable assignment of the surplus proceeds. We think that the letter dated on the 18th July and signed by Rámji Joitá before the 8th of August, is a good equitable assignment in writing to Finlay, Scott, and Co. It closely resembles the letter which in *Diplock v. Hammond (e)* was held to be a valid equitable assignment. (See also *Chowne v. Baylis*, 31 Beav. 351.)

It has, however, been said that the moneys had not reached Ewart, Latham, and Co. on the 8th of August 1870, when they received the letter, and, therefore, that there was not any valid assignment. But this argument is not well founded. It rests upon a confusion of assignment with notice. It was not merely possible, but highly probable, that the surplus proceeds of the one hundred bales, realisable by means of the policy of insurance, would reach the hands of Ewart, Latham, and Co., through whose firm Rámji Joitá had consigned those one hundred bales to England. The Court of Chancery gives effect to assignments of every kind of future and contingent interests, and possibilities, in real and personal property, if made for valuable consideration (2 Spence, 852-865). This court also is a Court of Equity, and follows the same doctrine. Such assignments operate by way of agreement or contract, which a Court of Equity will enforce. Those surplus proceeds, therefore, though not attachable under the Civil Procedure Code by a prohibitory order to Ewart, Latham, and Co., before the moneys reached their hands, and though probably not the subject of suit against Ewart, Latham, and Co. until then, yet, being at least a pos-

sible interest in Rámji Joitá, were assignable by him in equity. Such assignment, if good against him, will be so against his judgment-creditors laying on attachments subsequent to the assignment. In order to obtain a clear view of this case, it must be remembered that this is not a struggle between rival assignees, but is one between an assignee for valuable consideration and attaching creditors. It is true that the prior assignee in equity of a chose in action (a debt), not having given notice to the debtor from whom the debt is due, cannot claim against a subsequent assignee for valuable consideration who did give such notice (*f*); but the reason for this is that, if a contrary doctrine were allowed to prevail, it would enable the creditor or *cestui que trust* to commit a fraud, by leaving it in his power to assign his interest first to one and then to another person, and perhaps to a great many more, and then persons, to whom the creditor or *cestui que trust* might subsequently offer to assign for valuable consideration, would have no opportunity of ascertaining, by any communication with the debtor or trustee, whether or not there had been a prior assignment of the debt or interest on which they proposed to rely as a security for their money. When it is said that an assignee has not done everything to perfect the assignment until he has given notice to the trustee or debtor, that means to perfect it for certain purposes—for it is plainly complete as between the assignor and assignee, if no third person claiming under the assignor intervenes. This reason does not apply to the case of judgment-creditors, who obtain their decrees quite irrespectively of the property, the subject of the assignment. These propositions will be found to be borne out by the remarks of Lord Lyndhurst in *Foster v. Cockerell* (*g*), and of Lord Chancellor Sir Mazière Brady in *Molloy v. French* (*h*), and by *Fortescue v. Barnett* (*i*), *Hobson v. Bell* (*j*), and Spence 764, 765. And in accordance with these views it was decided in *Justice v. Wynne* (*k*) that, between volunteers, giving notice,

1871.

MEGJI
HANSRAJ
et al.
v.
RA'MJI
JOITA'.

(*f*) *Dearle v. Hall*, 3 Russ. 1, and *Loveridge v. Cooper*, *ibid.* 30.

(*g*) 3 Cl. & F. 456, 475. (*h*) 13 Ir. Eq. R. 261.

(*i*) 3 Myl. & K. 36. (*j*) 2 Beav. 23.

(*k*) 12 Ir. Chan. Rep. 289, 299.

1871.

MEGJI
HANSRAJ
et al.
v.
RAMJI
JOITA.

to the debtor, of an assignment of the debt does not affect priorities. Lord Justice Blackburne there said: "It would be a total perversion of the doctrine of this Court to allow want of notice of a prior title to be a ground of defence of a puisne title or incumbrance acquired without consideration. That doctrine is founded on, and limited to, the purpose of protecting purchasers, and never can be called in aid of the right of a party claiming under a voluntary instrument, which is the claim of the respondent here." Now in this case the assignees of the chose in action (Finlay, Scott, and Co.) are such for valuable consideration, namely, a pre-existing debt of Rs. 23,000 due to them by the assignor, Rámji Joitá; and the attaching creditors are not rival assignees for valuable consideration, or indeed assignees at all. They are in no better position, as regards Finlay, Scott, and Co., than Rámji Joitá himself would be.

This not being a case of rival assignees, we think that the fact that notice was given to Ewart, Latham, and Co. by Finlay, Scott, and Co., before the moneys reached the hands of the former, does not affect the case, and, therefore, that the cases which have been cited for the execution-creditors, and which were decided with reference to the time at which notice was given, are inapplicable here. As to *Buller v. Plunkett* (1), in which there were, by an officer in the army, two covenants to assign the proceeds of his commission to two different parties; and in both cases those parties gave notice to the army agent before those proceeds reached his hands, which notices Vice-Chancellor Wood treated as null and inoperative, and, therefore, refused to give priority to the second covenantee, who had given the earlier notice, it is worthy of remark that he did not hesitate to give effect to the first covenant as a good equitable assignment, although no valid notice of it, in his opinion, had been given to the army agent. In *Webster v. Webster* (m), Lord Romilly, M. R., in giving preference to the equitable assignee over the attaching creditor, is reported as attributing some importance to the fact, that a proper notice of the assignment was given

(1) 1 John. & Hem. 441.

(m) 31 Beav. 393, 395.

to the garnishee before the second attachment. We think, however, that, so far as regards the claim of the equitable assignee, the result of that case as between him and the attaching creditor ought to, and most probably would, have been the same, whether or not the equitable assignee had given any notice. There was not any necessity for notice to the garnishee in order to make the equitable assignment binding on the assignor, and, therefore, binding on his attaching creditor. Indeed, Lord Romilly admits (page 397) that the attaching creditor could rightly attach only such moneys in the hands of the garnishee as the assignor himself could recover from the garnishee. Any equities, which were good as against Mr. Guy Webster, would have been so as against his attaching creditor.

Some arguments were sought to be drawn for the execution-creditors from what it was alleged would have been the position of Finlay, Scott, and Co., as equitable assignees who had given a premature notice, with respect to assignees in bankruptcy or insolvency. But as Rámji Joitá was neither a bankrupt nor insolvent, it is unnecessary to complicate this case with such considerations.

Counsel for the execution-creditors having declined to base any argument upon the Stat. 13 Eliz., c. 5, we need only say that the equitable assignment to Messrs. Finlay, Scott, and Co. does not appear to us to come within the range of that enactment.

On behalf of the plaintiffs and the other attaching creditors an objection for want of a stamp has been made to the letter, dated July 18th, 1870, of assignment to Finlay, Scott, and Co. We should feel bound to admit it in evidence now on payment for the proper stamp, and of the penalty, if of opinion that it requires a stamp. But we have not been satisfied, by the argument for the plaintiffs and other attaching creditors, that the letter does require a stamp. If it fell under any heading in the Stamp Act, XVIII. of 1869, Schedule 1, it would be under that of "Conveyance." In the glossarial section of the Act (Sec. III., cl. 11), Conveyance is

1871.

MEGJI
HANSRAJ
et al.
v.
RA'MJI
JOITA'

1871.

MEGJI
HANSRAJ
et al.
v.
RA'MJI
JOITA'.

defined to mean "any instrument" (with certain specified exceptions) "by which property is conveyed *inter vivos*," and "property" is defined (*ibid.*, cl. 26) as meaning "property being in British India." The property (which was a chose in action) the subject of this letter of assignment, was not in British India when that letter was signed by Rámji Joitá; and did not arrive until ten or eleven months afterwards. It is at least doubtful whether the definition of property given in the Act would include property not in British India at the time of the execution of the document, but which may subsequently be brought or sent to British India. The word "being" gives strength to that doubt. Whenever it is *in dubio*, whether the Legislature intended to impose a charge upon the subject in favour of the Crown, the benefit of the doubt must, as established by a legion of authorities, be given to the subject (*n*). Accordingly, we hold that this letter does not require a stamp.

The order of this court is that the cause shown against the summons must be allowed, and the summons discharged. The plaintiffs, who took it out, must pay to Ewart, Latham, and Co. their costs as between solicitor and client. The attachments in this and the other suits, in which the several attaching creditors have been served with notice of this application, must, so far as regards the sum of Rs. 5,149, the subject of it, in the hands of Ewart, Latham, and Co., be removed. Those gentlemen will thus be left in such a position as to enable them to pay over that sum to Messrs. Finlay, Scott, and Co., who have succeeded in their contention here, and to whom, therefore, we should have given their costs of opposing the summons, had not the plaintiffs been encouraged to make the application by the fact, that one of the Judges of the High Court had in a similar case adopted a view favourable to them, and different from that on which we now act. Messrs. Finlay, Scott, and Co. will, accordingly, bear their own costs, as will also the several attaching creditors who have had notice to attend on the hearing of the summons.

(*n*) Vide *infra*, *Dullabh Shirlál v. Hope*, A. C. J. 213.