Referred Case.

1871.
June 26.

BA'I KU'VAR .....*Plaintiff.*
VENIDA'S GANGA'RA'M.....*Defendant.*

Writ of Attachment against Person or Goods—Execution by Sheriff or Názar—Breaking open Outer Door of Dwelling-house—Breaking open Inner Door.

A Názar or Sheriff cannot, under a writ of attachment, break open a defendant's dwelling-house to execute civil process against his person or goods if the outer door is closed and locked, even when he finds that the defendant has absconded to evade such execution.

The privilege extends to a man's dwelling-house or out-house or any office annexed to the dwelling-house, but not to a building standing at a distance from the dwelling-house and not forming parcel of it.

If, however, the outer door of the defendant's dwelling-house be open, and the Sheriff or Názar enter, he may afterwards break an inner door to take the goods.

THE following question was submitted for the opinion of the High Court by Gopálráv Hari Deshmukh, Judge of the Court of Small Causes at Ahmedábád, under Sec. 1 of Act X. of 1867, and came before WESTROPP, C. J., and GIBBS, J. :—

"Can a house be opened by the Názar, holding a writ of attachment of moveable property, when he finds that it is closed, locked up, and there is no one in it, the defendant having apparently absconded leaving his house in that state?

"The plaintiff filed his suit, and immediately afterwards applied for attachment previous to judgment, on the ground that the defendant, having become insolvent, was about to remove his property. A writ was granted, but the Názar, on going to the house in which the defendant resided, found that the defendant had gone away, leaving a lock on it. The Názar has applied for instructions as to how he should proceed in executing the writ under the circumstances.

"It is usual for merchants and traders, when they become insolvent and are unable to satisfy their creditors, to abscond and to conceal themselves for some time till the irritated feelings of their creditors have been cooled down by time. They generally close their houses and shops, and often do not

1871.
BA'I KU'VAR v. VENIDA'S GANGARA'M.

leave anybody in them. Attachments previous to judgment are applied for on such occasions, in order to secure what little property might be found in the house. I have doubts as to the manner of proceeding under such circumstances, and, therefore, refer this question.

"The practice in many courts is to open houses by removing locks, and to attach the property in them in the presence of two or more respectable persons in the neighbourhood. If houses are not thus opened, there would be considerable hardship to the parties seeking redress.

"My opinion, however, is that no attachment should be made unless the house is found open."

WESTROPP, C.J.,:—The Judge of the Court of Small Causes at Ahmedábád has submitted the following question for the opinion of this court. (*See* above.)

We must reluctantly answer this question in the negative, and, therefore, in accordance with the opinion of the learned Judge himself, who seems to have arrived at it with regret. We have anxiously sought authority to the effect that the absconding of the defendant would justify the Názar in breaking open the outer door of the house, but have not, after a most careful search, been able to find any decision or even dictum which would warrant us in asserting that the absconding of the defendant alters the general rule that every man's dwelling-house is his castle, and that if the outer door be locked, the Sheriff or Názar may not break it open for the purpose of executing civil process against his person or goods. The authorities will be found collected in the note to *Semayne's Case*, 1 Smith's L. C. 39, 44, *et seq.* (3rd ed.), and in the notes to the report of the same case, 5 Coke's Reports by Frazer, p. 188 (91 *a*), and Addison on Torts, p. 629 (3rd ed.); 2 Bac. Abr., Execution, N.; 4 Comyn's Dig. (by Hammond), Execution, C. 5. The privilege has been applied even to an unfinished house: *Whalley* v. *Williamson* (*a*). It extends to a man's dwelling-house or out-house or other office annexed to the dwelling-house, but not to a

(*a*) 7 Car. & P. 294.

building, such as a storehouse or barn, standing at a distance from the dwelling-house and not forming parcel of it: *Penton* v. *Browne* (*b*).

If the outer-door of the defendant's dwelling-house be open and the Sheriff or Názar enter, he may afterwards break an inner door, or boxes, trunks, chests, &c., &c., to take the goods (*c*).

We think that it would be an improvement in the law if, where a defendant, leaving his dwelling-house unoccupied by any member of his family, and with his property locked up in it, absconds for the purpose of evading execution of a decree against him, the Sheriff or Názar were permitted to break open the outer door and to seize the property. On the authorities, we are unable to say that he can now do so; and we think that legislation would be necessary in order to render such a proceeding legal.

GIBBS, J., concurred.

Referred Case.

June 26.

TUKA'RA'M bin RA'MKRISHNA'.....*Plaintiff.*
GUNA'JI bin MHA'LOJI.....*Defendant.*

Hindú Law—Execution against Husband—Ornaments of Wife—Stridhan *when liable to seizure; when not.*

Ornaments on the person of a Hindú wife, if forming part of her *stridhan*, cannot be taken under an execution against her husband. On certain occasions, however, the husband may take them, but the right is personal to him.

JANA'RDAN VA'SUDEVJI, Judge of the Court of Small Causes at Puṇá, submitted for the decision of the High Court the question—"Can the ornaments on the person of the wife of a judgment-debtor who is a Hindú be taken in execution sued out against the husband?

"The question has arisen in the matter of an application made by the plaintiff (Tukárám) for execution of the decree which he has obtained against the defendant Gunáji.

(*b*) 1 Siderfin 186; S. C. 1 Keble, 698.

(*c*) 2 R. Palmer 54; 1 Brownlow 50; 2 Rol. Rep. 2; Shower 87 (Butt's ed. 403); Cowper 1; 4 Taunton 619; see also 1 Marshall 565; 6 Taunton 246; Hobart 263; 3 B. & P. 229.