

1872. where they respectively entered into the contract: *Potter v. SUGANCHAND BROWN (b); Allen v. Kemble (c); Story's Conflict of Laws SHIVADA'S v. para. 315. MULCHAND JOHA'RIMAL. Farran in reply.*

GREEN, J.—I must hold that the Court in this case has no jurisdiction. The contract that the indorser of a bill enters into is, in case the drawee does not pay, to pay the amount of the bill with interest in the place where he has indorsed the bill. In the present case, the bill, it is admitted, was indorsed by the defendant at Ajmere, and the obligation that the defendant is under is to pay at that place. As the leave of the Court has not been obtained under Clause 12 of the Letters Patent, I have no option but to follow the course adopted in *Framji v. Wallace (d)*, and direct the plaint to be returned to the plaintiff, and the plaintiff must pay the defendant his costs.

Order accordingly.

Attorneys for the plaintiffs—*Dallas and Lynch.*

Attorneys for the defendant—*Rimington, Hore and Langley.*

[APPELLATE CIVIL JURISDICTION.]

July 31.

Miscellaneous Special Appeal No. 11 of 1872.

GANGA'RA'M VELJI *Appellant.*

PARBHU DAYA'RA'M *Respondent.*

Civ. Pro. Code Secs. 205 and 273—Wearing Apparel—Attachment.

Necessary wearing apparel is not liable to attachment under Sec. 205 of the Code of Civil Procedure.

THIS was a miscellaneous special appeal from the decision of W. H. Newham, Judge of the District of Súrat, confirming an order of the Subordinate Judge of Olpár.

A judgment creditor in execution of a decree of the Civil Court attached the necessary wearing apparel of his judgment

(b) 5 East 124. (c) 6 Moore P. C. C. 314. (d) 1 Bom. H. C. Rep. 113.

debtor who contended that it could not be attached. The Subordinate Judge having allowed his contention, the judgment creditor appealed to the District Judge who confirmed his order for the reasons stated in the following extract from his judgment :—

“ This Section 205 of Act VIII. of 1859 would at first sight appear to exclude all exemptions of saleable property. It was considered in *Re Pestanji Cursetji Shroff (a)*, in which matter it was ruled that account books, not being saleable (except as waste paper), were to be exempted under the common law rule. Other exemptions are given in the cases quoted under the section in Broughton’s Civil Procedure Code 4th Edn. p. 172, but do not bear on the present case.

“ By the English law whatever is in the personal use or occupation of any man is for the time privileged, and protected from any distress, on account of the danger which might arise on a breach of the peace : 3 Stephen p. 342. See 1 Smith L. C. 6th edn, p. 385, under *Simpson v. Hartopp*. (In this case the clothes were attached on the debtor’s body.) And wearing apparel is exempted from seizure under a writ of *fi. fu* by 8 & 9 Vict., C. 127, Sec. 8. This section is quoted also in Pestanji’s case this, however, is by the statute and not by the common law. * * * Section 205 does not specially exempt wearing apparel, but, according to the letter of that section, the Nazir of the Court was not bound to stop at appellant’s dhotar (as he did in this case). He might have attached and removed every article of clothing he had on ; and debt is not confined to the male sex. It is absurd to suppose that the framers of the code could have intended to legalize such a proceeding as I have indicated, and it may fairly be held that the above section was enacted subject to such exemptions founded on the common law as that quoted from Stephen. Ornaments into which money might be converted, or even costly clothing, call for no exemptions, even though on the debtor’s person ; but I consider that ordinary and necessary apparel, on the judgment debtor’s

(a) 3 Bom. H. C. Rep. O. C. J. 42.

1872. person, is an article of property which should not be taken
GANGA RA'M in execution."'
VELJI

"
PARBHU
DAYA RA'M.

The special appeal was heard by LLOYD and KEMBALL, JJ.

Ghanashám Nílkanth Nádkarni for the special appellant :—
Section 205 of the code makes no exemption in favor of
wearing apparel. Wherever in the code, the Legislature
intended to make any exemption, they have made it in
express terms, for instance in Sec. 273, where the necessary
wearing apparel of the person *arrested*, and that of his family,
as well as the necessary implements of his trade, are excepted
from seizure. The English law on the subject being
founded upon statute, and not on the rules of common law,
ought not to be applied. That law places a limit of £5 with-
in which wearing apparel cannot be attached. So that the
English law is essentially different from the Indian law on
this matter. The principle on which, in the case of *Pestanjí
Cursetjí Shroff*, the account books were held not liable to
attachment is that account books, as such, were not saleable,
whereas wearing apparel, however trifling, is saleable as
articles of clothing.

Nánabhái Haridás for the special respondent :—The Le-
gislation could not have intended that by the operation of the
law any person should be deprived of all his clothing. Their
intention might be gathered from the exception provided in
Sec. 273 which by implication should be made applicable to
Sec. 205. The Legislature could not place any minimum of
wearing apparel in India, for it rises from the very smallest
value to a very large sum. The Legislature, besides, could
not have intended that if the judgment creditor attaches his
debtor's person, he cannot lay hold of his clothing or imple-
ments of trade, but that if he does not choose to do that, and
proceeds against his property only, he can take everything,
even to the veriest rag. Such a proceeding would be against
equity and good conscience. It is, besides, a question whe-
ther the creditor cannot be punished for abetting a public
nuisance which an indecent exposure of person might be
held to be.

PER CURIAM:—The Judge has found that the articles in question were ordinary and necessary apparel taken from the body of the respondent. It has been contended that because such articles are not exempted by Section 205, the appellant is entitled to have them attached; but when we look to Section 273, and find that in case of arrest a debtor who wishes to obtain his discharge is not compelled to give up his necessary wearing apparel, it would, we think, be contrary to reason to suppose that it was the intention of the Legislature under Sec. 205, which is merely descriptive of the character of the property to be attached, to compel the last rag upon his person to be given up. And this might be the effect if we were to hold that necessary wearing apparel is liable to attachment.

Order confirmed.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 146 of 1872.

August 1.

KRISHNA'JI NA'RA'YAN.....*Appellant.*

GOVIND BHA'SKAR and others*Respondents.*

Hindu law—Mortgagee without possession—Suit to recover land—Māmlatdār's order against mortgagor—Judgment not inter partes—Bombay Act V. of 1864.

In order that a Hindu mortgagee may successfully maintain an action of ejectment against third persons wrongfully in possession of the mortgaged property, it is not necessary that such mortgagee should have been put in possession by his mortgagor. He can bring his action based upon the title of his mortgagor, if the mortgagor had a good title to the land, and was in possession of it within twelve years before the suit was brought:

A mortgagee is not affected by a Māmlatdār's order, made under Bombay Act V. 1864, on the application of the mortgagor for possession subsequent to the date of the mortgage.

THIS was a special appeal from the decision of H. J. Parsons, Assistant Judge at Ratnagiri, in Appeal No. 279 of 1870, reversing the decree of Mādhavrāv Shesgir, 2nd Class Subordinate Judge at Goochagur.