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[APPELLATE CIVIL JURISDICTION.]

Civil Referred Case No. 12 *of* 1873.

VA'NA' JAGANNA'THJI .....*Appellant.*

HATA' DIPA'JI .....*Respondent.*

Attachment of property of third person—Liability of execution-creditor in damages.

There is not any universal rule that a judgment-creditor is or that he is not liable in suit for a wrongful seizure, or for injury to the goods while under seizure. His liability must depend upon the circumstances of the case, *i.e.*, upon the fact whether the wrongful seizure or the injury is the result of his own conduct, for instance, if the judgment-creditor personally, or his authorized agent (*ex. gr.*, his pleader), apply, under Section 214 of the Civil Procedure Code, for the attachment of property which is specially designated in that application, and if the Court grant its warrant for the seizure of that particular property, and the officer of the Court execute the warrant, and the property be not that of the judgment-debtor, the judgment-creditor would certainly be liable for that wrongful seizure, and the officer of the Court could justify under the warrant, and would not be liable so long as he kept within the duty expressly prescribed for him by it.

But if the application of the judgment-creditor were for a general attachment under Section 218 of the Code, and the Court took no such security from him as it might take under that section, and if the Court granted a general warrant for the attachment of the moveable property of the judgment-debtor, and the officer of the Court, without any suggestion to that effect from the judgment-creditor or his agent, beyond a general direction to execute the warrant, were to seize property not belonging to the judgment-debtor, the judgment-creditor would not be responsible.

Quære.—Whether under such circumstances as these last mentioned, the officer of the Court would be responsible ?

THIS case was referred for the opinion of the High Court by W. M. P. Coghlan, Judge of the District Court of Tanna. The District Judge raised two issues, viz : (1) whether the rice attached was the property of the plaintiff, and (2) whether plaintiff can recover damages, and found, the first issue in favour of, and the second against, the plaintiff, pending the decision of the High Court. He made the following observations in his finding on the second issue :—

"I feel considerable difficulty on the second issue in consequence of the apparently contradictory rulings on the question whether, irregularity and malice apart, a judgment-creditor, carrying out his decree, is liable in damages for the attachment of property which belongs to third parties.

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"I believe that I may say that prior to the ruling of the High Court in *Dámodhar Tuljárám* v. *Lallu Khusáldás* (*a*) the practice in this Presidency was that the judgment-creditor was not liable. The contrary doctrine, however, prevailed in the Bengal High Court, *Mussamát Subjan Bibi* v. *Sheikh Sariatulla* (*b*).

"In *Dámodhar Tuljárám* v. *Lallu* the District Judge (myself) had disallowed a claim for damages against a judgment-creditor on the ground that 'the plaintiff may have suffered loss, but legally there had been no injury, the defendant's conduct having been that of a reasonable man carrying out a decree of a court in a usual manner.'

"On special appeal the decree was reversed by the High Court (Melvill and Kemball, JJ.) on the ground that a 'judgment-creditor who attaches property which does not belong to his judgment-debtor, commits a trespass, for which he is responsible in damages, even though he may have acted without malice and mistakenly.' This would appear to be conclusive, but the following will show that it cannot be so taken :—

"On the 27th August 1872, the Joint Judge of Tanna (S. Tagore) heard a suit against a judgment-creditor to recover damages for the attachment of some grain in which the plaintiff had a half share. The learned Joint Judge took a distinction between the case and *Mussamát Subjan Bibi* v. *Sheikh Sariatulla* in that there could be no trespass, because the judgment-debtor admittedly held a half share in the property attached, and unaware apparently of *Dámodhar* v. *Lallu*, for the pleaders engaged tell me that the case was not mentioned, stated a case for the High Court, *Khana* v. *Degumya*, Appeal No. 335 of 1871, for the determination of the very important question as to the liability of a decree-holder for the wrongful attachment of the goods of a stranger in execution of a decree, and the Honourable the High Court decided the point in the following words :—

(*a*) 8 Bom. H. C. Rep. A. C. J. 177.
(*b*) 3 Ben. H. C. Rep. A. C. J. 413.

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'The Court are of opinion that, as it does not appear that the damage was caused by any interference by the judgment-creditor with the property after it was seized by the *Nazir*, an action will not lie against him for the damage sustained by the grain.'

"Nothing is said of the bearing of the fact of the property of the judgment-debtor in half the grain attached, on the question of trespass, perhaps because it has no bearing on the question, albeit that it might in such a case be a good plea to show that the wrongful taking was the result of inevitable accident in asserting a legal right. *Khana* v. *Degumya* appears, however, to have been decided on the broad principle that a judgment-creditor, who has not interfered with property after attachment, is not liable to an action for damages.

"The rulings in *Dámodhar* v. *Lallu* and *Khana* v. *Degumya* appear to be at variance. It is interesting to observe that after the ruling in *Dámodhar* v. *Lallu* by the Honourable Judges Melvill and Kemball, but before its publication, His Lordship the Chief Justice (Westropp, C.J.,) delivered the well known judgment in *Kálu* v. *Dámodhar* (*c*) in which His Lordship ruled that it is settled law that, save for irregularity, a purchaser at a court sale is not entitled to a refund of purchase-money, because the judgment-debtor had no right, title, or interest in the property sold. Having so ruled, HisLordship guardedly said that it was not to follow from his ruling that 'a person, whose property has been wrongfully seized and sold, or seized alone, has not a remedy against the execution-creditor.' His Lordship then reviewed several cases, both favourable and unfavourable to the liability of the execution-creditor, and declined, sitting alone, to overrule the decisions in which the liability of the execution-creditor was affirmed, not, however, without suggesting misgivings as to their correctness.

"In the face of the rulings I have referred to, I shall submit this statement of the case to the High Court, in order

(*c*) 9 Bom. H. C. Rep. 92.

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to have the law settled as to whether, irregularity and malice apart, a judgment-creditor is liable in damages for the wrongful attachment of goods, not the property of his judgment-debtor.

"As the point will be decided by the High Court, my opinion is of no importance; it is necessary, however, to state it. It is that loss occurring in the *bonâ fide* execution of a decree is *damnum absque injuria*, and that a suit for damages does not lie.

"I add only one word on the question of expediency. The reason of the rule of law that a judgment-creditor shall not be liable for a *bonâ fide* mistake in carrying out his decrees appears to be clear. It is expedient that decrees of Courts of justice should be operative and easy of execution without risk or danger. Humanly constructed machinery cannot work without inconvenience of some kind. The object is to reduce such inconvenience to a minimum. The inconvenience of carrying out a decree is, I think, reduced to a minimum under this rule, the only inconvenience being that the public must be careful either to retain their goods in their own custody, or to entrust them only to solvent persons. On the other hand, if it be affirmed as settled law that a judgment creditor, who attached property which does not belong to his judgment-debtor, commits a trespass for which he is liable in damages, even though he may have acted *bonâ fide*, I foresee great inconvenience in the execution of legal process, and a fruitful cause of offences against the law. If it should become generally known that a judgment-creditor is liable in damages for mistaken attachment, it cannot be doubted that when the hated creditor appears with a decree, he will find himself well supplied with materials for future actions for damages.

"It may be said that a court would refuse to grant damages when goods, not the property of the judgment-debtor, were placed in the way of the judgment-creditor; but the answer is, that it would be practically impossible for the

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courts so to distinguish in most cases. Such a ruling of the law would not fail to result in increased litigation and in an augmentation of the heart-burning and ill-feeling which exists in a deplorable degree in this country between the two well defined classes of creditors and debtors.

"I find, then, on the second issue, that the plaintiff cannot recover damages, and submit this statement of the case to Her Majesty's High Court of Judicature, under Section 28 of Act XXIII. of 1861. The decree, contingent on the opinion of the High Court, will be to reverse the decree of the Subordinate Judge, and reject the claim with costs on the respondent."

The case was argued before WESTROPP, C.J., MELVILL and WEST, JJ., on the 2nd December 1873.

Dhirajlál Máthurádás, Government Pleader, for the appellant.

Shántárám Náráyan for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by

WESTROPP, C.J.:—The appellant obtained a decree against Jatkyá, towards satisfaction of which certain rice in husk was attached and sold. The respondent, alleging that the rice in husk is his property, has brought the present suit against the appellant to recover, by way of damages, the value of the rice. The judgment-debtor, Jatkyá, has, under Section 73 of the Civil Procedure Code, been most unnecessarily added as a party defendant to this suit. The Subordinate Judge of Penn has made a decree in favour of the respondent on the ground that the rice belonged to him, and was, therefore, wrongfully seized and sold in the suit brought by the appellant against Jatkyá. The appellant, Váná, has appealed to the District Judge of Thana, who, under Section 28 of Act XXIII. of 1861, has submitted to this Court the question "whether, irregularity and malice apart, a judgment-creditor is liable in damages for the wrongful attachment of goods not the property of his judg-

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ment-debtor." The District Judge has not informed us whether the application of the appellant, in the suit against Jatkyá, for an attachment, was accompanied by any such inventory of the property to be attached as is mentioned in Section 214, Civil Procedure Code, or otherwise specified the rice in question as part of the property to be attached, or whether the application was for a general attachment, and whether the attaching Court took the security contemplated by Section 218, or held any examination under Section 219, or what was the form of warrant granted, nor has he sent up the plaint, written statement, or exhibits. We are then compelled to gather, so far as we may, from the summary of the pleadings given in his judgment in this case by the District Judge, what are the circumstances under which the rice was seized and sold. The plaint is there represented as alleging that the rice was sold "at the instance of the defendant" (present appellant Váná) "as the property of his judgment-debtor, one Jatkyá, who occupied his (defendant's) house as a tenant." Váná, in his written statement, does not appear to have denied that the attachment and sale were made at his instance, but he asserted that the rice "was attached while in his judgment-debtor's possession" (which is a circumstance that could not make the attachment rightful, if the goods did not belong to the latter) (*d*) "that a sale once effected cannot be set aside, and that the rice belonged to his judgment-debtor and not to the plaintiff." The District Judge has found that the rice, at the time of the seizure and sale, was the property of the respondent (the present plaintiff), and not that of Jatkyá, the judgment-debtor of the appellant (defendant); and has expressed his opinion that Váná, the judgment-creditor, is not responsible in damages for the wrongful seizure and sale of the appellant's rice.

It appears to us that, upon the materials supplied to us by the District Judge, we must assume that the seizure and sale of the rice were both traceable to the direct action

(*d*) *Dawson* v. *Wood*, 3 Taunt. 256., *per* Heath, Lawrence, and Chmbre, JJ., *dissentiente* Mansfield, C.J.; *Edwards* v. *Bridges*, 2 Stark, 396; *Glasspoole* v. *Young*, 9 B. and C. 696.

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of the appellant himself. If that be so, he certainly is responsible in damages to the respondent, inasmuch as it is found as a fact by the District Judge that the rice was, when those events occurred, the property of the respondent and not of the judgment-debtor, and, therefore, the seizure and sale were wrongful, and being so, the tort-feasor is liable to suit for the tort which he has committed. It is quite immaterial whether or not he knew that the rice belonged to the respondent. The appellant ought, before he prompted the Court through its officer to seize the rice, to have ascertained that it belonged to the judgment-debtor. He chose, however, to run the risk of a wrongful seizure and, having done so, must now bear the consequences.

There is not any universal rule that the judgment-creditor is, or that he is not, liable in suit for a wrongful seizure, or for injury to the goods while under seizure. His liability must depend upon the circumstances of the case, *i.e.*, upon the fact whether the wrongful seizure or the injury is the result of his own conduct. For instance, if the judgment-creditor personally, or by his authorized agent (*e.g.*, his pleader), apply under Section 214 of the Civil Procedure Code for the attachment of property, which is specially designated in that application, and if the Court grant its warrant for the seizure of that particular property, and the officer of the Court execute that warrant, and the property be not that of the judgment-debtor, the judgment-creditor would certainly be liable for that wrongful seizure, and the officer of the Court, on the other hand, could justify under the warrant of the Court, and would not be liable so long as he kept within the duty expressly prescribed for him by that warrant. But if the application of the judgment-creditor were for a general attachment under Section 218 of the Code, and the Court took no such security from him as it might take under that section, and if the Court granted a general warrant for the attachment of the moveable property of the judgment-debtor, and the officer of the Court, without any suggestion to that effect from the judgment-creditor or his agent, beyond a general direction to execute the warrant, were to

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seize property not belonging to the judgment-debtor, the judgment-creditor would not be responsible, inasmuch as the warrant, which he sued out, and under which the officer of the Court purported to act, did not direct the officer to do what he did, and the latter (if the case were in England) would alone be liable for the tortuous act, which was exclusively his own (*e*). In the case of such a general warrant the officer ought to be cautious not to act upon it until the judgment-creditor or his agent points out the goods to be seized as those of the judgment-debtor. A Sheriff, if he have any doubt as to the ownership of the goods, generally demands an indemnity-bond from the creditor before acting upon the writ. If he make the seizure, and the goods turn out to be those of a third person not the debtor, both the Sheriff (in England) and the creditor who pointed out the goods as those of the debtor, are liable to an action of trespass. If, in such a case, the owner of the goods elect, as he generally does, to sue the Sheriff, and recover damages, the latter can recoup himself by suing the creditor on his indemnity-bond. But even if the Sheriff have neglected to take an indemnity bond, he is not without remedy, if the creditor had represented to him that the goods were those of the judgment-debtor, for an action on the case for deceit, *i.e.*, for the misrepresentation, lies for the Sheriff against the judgment-creditor, as was decided in *Humphrys* v. *Pratt* (*f*) by the House of Lords in 1831, Lords Tenterden and Wynford moving the judgment of the House to that effect, affirming the judgment of the Court of Exchequer Chamber in Ireland, which had affirmed a similar judgment of the Court of Exchequer. The Court of Exchequer Chamber was divided, Bushe, C. J., O'Grady, C. B., Smith, B., Moore, J., Jebb, J., Burton, J., Pennefather, B., and Vandeleur, J., being in favour of affirming, and Plunket, C. J., Johnson, J., and Torrens, J. in favour of reversing the judgment of the Court below. McClelland, B., was not present (*g*). To the same effect is illustration

(*e*) Bac. Abr. *Execution* (N) 5. 7th Ed.; *Roberts* v. *Thomas*, 6 T. R. 88; *Barker* v. *Braham*, 3 Wils. 368, *per* DeGrey, C.J., p. 376.

(*f*) 5 Bligh. N. S. 154. S. C. 2 Dow. & Cl. 288. (*g*) 2 Hud. & B. 522.

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(*n*) of Section 223 of the Indian Contract Act, 1872. One of the reasons for the greater frequency in England of actions for wrongful seizures against Sheriffs than against judgment-creditors, is that the writ of *fieri facias* is addressed to the Sheriff in general terms—thus: "We command you that of the goods and chattels of *A. B.* in your bailiwick, you cause to be made (*fieri facias*) £20 which *C. D.* lately in our Court before us at Westminster recovered against him for his damages," &c., and it is not always known to the injured party whether the goods wrongfully seized were pointed out to the Sheriff by the judgment-creditor, or easy to prove that such was the fact, so the simpler course is to sue the Sheriff (*h*), who is a solvent person, and who, unless specially ordered by the Court, which he rarely would be, to seize specific chattels, is a trespasser, if the goods seized be not those of the debtor, and cannot, when directed by the *fieri facias* to levy the debt out of the goods of *A. B.*, justify under that writ a seizure of goods belonging to another person. In India, however, the warrant is more usually special than general, being ordinarily issued upon an application for the attachment of particular property named in it, and thus the judgment-creditor becomes responsible if those goods be not those of his debtor. The officer of the Court may always make the judgment-creditor responsible by declining to seize any goods until the latter or his agent points them out as the property of the debtor. In that case, the officer will protect himself even when the warrant is general, for although, if under such warrant, he take goods not the property of the debtor, and the officer should become liable to the rightful owner, yet, as already shown, the officer may recover from the judgment-creditor, as damages occasioned by his misrepresentation, any damages which he (the officer) has been compelled to pay to the true owner of the goods for the wrongful seizure. It must be recollected, however, that what we are discussing here is the question as

(*h*) See *per* Peacock, C.J., 3 Calc. W. R. Misc. 14 as to the difference between a Nazar and a Sheriff.

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to the extent of the liability of the Indian judgment-creditor and not that of the Nazar or other officer of Indian Mofussil Civil Courts. We have pointed out how the Nazar or other officer may certainly avoid liability, or if he have incurred it, may recoup himself, but it is unnecessary for us now to discuss the extent of his liability, and we refrain from expressing any opinion upon it. In Bengal, a strong distinction has been taken between the liability of an English Sheriff and a Bengal Nazar or Court peon, partly founded on the Bengal Act V. of 1863—see 11 Beng. L. R. 256.

The learned District Judge has referred to a former case, (which came before the High Court on appeal from his decision) *Dámodhar* v. *Lallu* (*i*), in which he stated his view to be that, there being no allegation of malice on the part of the execution-creditor, or that he knew that the goods seized were not those of his judgment-debtor, the wrongful seizure was *damnum absque injuria*, and no action was sustainable by the owner against the execution-creditor. In support of that view, *Davies* v. *Jenkins* (*j*) was cited to the High Court (*k*), but the decision in *Davies* v. *Jenkins* (which was an action against the attorney of the execution-creditor) did not support that opinion. It was argued upon a demurrer to a declaration in case not in trespass. It was admitted by the Court that an action of trespass would lie against the Sheriff, and it was not decided or hinted that an action of trespass would not lie against the execution-creditor himself, but it was held that, in the absence of an allegation of malice, an action *on the case* would not lie against the execution-creditor's attorney. In *Barker v. Braham* (*l*) an action of trespass for false imprisonment was sustained against both the attorney and the client.

In *Dámodhar* v. *Lallu*, as I understand the report of that case, the execution-creditor Lallu would seem to have specially applied for the attachment of the boat, which turned out

(*i*) 8 Bom. H. C. Rep. A. C. J. 177.
(*j*) 11 M. & W. 745.
(*k*) 8 Bom. H. C. Rep. A. C. J. 179.
(*l*) 3 Wilson 368. See also *Bates* v. *Pilling infra.*

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not to be the property of his debtor, Degin, and, in his written statement, Lallu persisted in alleging that the boat was the property of the debtor, and not that of Dámodhar. The decision of the High Court proceeded on the assumption that the attachment of the boat was specially caused by Lallu, the judgment-creditor himself, and that it was not the mistake of the officer of the Court proceeding upon a general warrant of attachment. There is, therefore, no such conflict as the District Judge seems to think, between that decision and the unreported decision in *Khemá* v. *Degumiyá* (*m*), also mentioned by him, where the *bajri* and *kulith* had been rightly attached, inasmuch as the judgment-debtor had an undivided half share in it, and the damage, which occurred to it while in the custody of the *Nazar* (*n*), and of which the plaintiff, who had the other half share, complained, was not in anywise occasioned by the conduct of the execution-creditor. *Kálú Visáji* v. *Dámodhar Govind* (*o*), also mentioned by the learned Judge, was decided upon a question not arising in the present case, and, in so far as it refers to the liability of the execution-creditor to the owner of goods wrongfully seized, is a mere enumeration of authorities on that question, upon which I neither expressed, nor intended then to express, any opinion.

The learned Judge has stated his belief to be that the doctrine in this Presidency, prior to *Dámodhar* v. *Lallu*, was against the liability of the judgment-creditor for a wrongful seizure. He has not referred to any cases in support of that impression. There are, however, cases which lead to the opposite conclusion. In Special Appeal No. 417 of 1861, *Gosái Náná* v. *Lálbhái Náranji*, Hebbert and Newton, JJ., on the 16th April 1863, in a suit to recover damages caused by the sale of a house under a decree against a person not the owner of the house, held that the execution-

(*m*) Civil referred case 28 of 1872. See also *Rájballab Gope* v. *Issan Chander Hajráh*. 7 Calc. W. R. Civ. Rul. 355, the head-note of which is too wide. See the remark on that case by Norman, J., in 3 Beng. L. R. 419, 420 ; and see 5 Beng. L. R. Appx. 73.

(*n*) Se Sec. 233 Civ. Proc. Code. (*o*.) 9 Bom. H. C. R. 92.

creditor, Lálbhái, was liable, and reversed the decree of the District Judge of Surat, who had reversed that of the Munsif at Bárdoli, which latter decree had awarded damages to the plaintiff against the execution-creditor. One of the points of special appeal there was "that there is no law which precludes a person, who does not sue to raise the attachment, from suing to obtain damages from the individual who wrongly put up appellant's property for auction, and the liability of the wrong-doer is not affected by the sale of the property. See Special Appeals Nos. 13 and 31 of the certified list." In Special Appeal No. 3 of 1866, *Káshináth Balál Ok* v. *Jetu Kálu*, decided on the 10th July 1866, Tucker and Gibbs, JJ., affirmed the decree of Mr. Izon, Acting Assistant Judge of Tanna, which affirmed that of the Munsif of Kalyán, whereby he awarded damages against an execution-creditor, the special appellant, for attaching certain immoveable and moveable property not belonging to his judgment-debtor. Amongst the points of special appeal were the following: "That the appellant was not liable in damages to the respondent (the owner of the property); that the sale being confined to the right, title, and interest of the judgment-debtor, the appellant could not be held responsible, if the judgment-debtor should prove to have no right, title, or interest in the same; that there was no irregularity in the sale of the property so as to give rise to a claim for damages under Sec. 252 of the Civil Procedure Code."

In Special Appeals 619, 643, and 685 of 1864, which all arose in one original suit brought by the owner of immoveable property against the execution-creditor, who had caused it to be sold, and also against the purchasers, the Sadr Amín at Ahmedabad decreed that the purchasers should restore the property to the owner, and that, if he failed to recover it from them, the execution-creditor should pay him damages to the extent of the value of it. The District Judge, Mr. Cameron, reversed so much of the decree as affected the execution-creditor, but the High Court (Couch, C.J., and

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Newton and Warden, JJ.) upon the 17th January 1865 restored the decree of the Sadr Amín.

In the cases above referred to (Special Appeal 417 of 1861, Special Appeal 3 of 1866, and Special Appeals 619, 643, and 685 of 1864), as resting upon a doctrine with respect to the liability of the execution-creditor different from that supposed by the District Judge to prevail in this presidency, there was immoveable property sold in execution, and there must, therefore, so far as that property was concerned, have been in each a special application for attachment under Sec. 213 of the Code. We have not any reason to believe that in the only one of them (Special Appeal 3 of 1866), in which moveable property was also sold, it was not the subject of a special application for attachment under Sec. 214. In fact, the papers in that case, which I have examined, lead me to the contrary inference.

Tamizuddin Mulla v. *Nyanutulla Sirkar* (*p*), in which the execution-creditor was not held liable, proceeded on the ground that one moiety of the undivided chattel, belonging to the debtor, was rightfully sold, and that his right, title, and interest only having been sold, the remedy for the owner of the other moiety, in the event of the purchaser of the first mentioned moiety converting the other moiety to his own use, would be against that purchaser only. That case is of the same class as *Khemá* v. *Degumiyá* (*q*) and *Rájballab Gope* v. *Issan Chunder* (*r*), which are clearly distinguishable from, and do not conflict with, the authorities, which establish the general doctrine that the execution-creditor is liable for a wrongful attachment or sale, *made at his instance or at that of his agent.*

Of that doctrine *Mt. Subjan Bibi* v. *Sheikh Sariatulla* (*s*) is a clear instance. There the Court (Norman and E. Jackson, JJ.,) held the execution-creditor liable for damages arising from the seizure and detention of cattle, which were acts done by the officer of the Court at the instance of

(*p*) 5 Beng. L. R. Appx. 73.
(*q*) Supra.
(*r*) 7 Calc. W. R. 355.
(*s*) 3 Beng. L. R. 413.

the execution-creditor, but not for the value of three bullocks (part of those seized), which had died during the detention, but whose deaths were not shown to be in any way directly attributable to the act of the execution-creditor in causing them to be seized and detained. The extent of the liability of the execution-creditor was well discussed there by the Court. That case was followed in *Kanai Prasád Bose* v. *Hirachand Mánu* (*t*), where, although it was admitted by the Court that the execution-creditor, who had caused the seizure of an elephant not the property of his debtor, had acted "in perfect good faith," yet the execution-creditor was held liable in damages to the rightful owner.

This doctrine is supported by English authorities. Of these *Jarmain* v. *Hooper* (*u*) is especially deserving of attention. The execution-creditor had obtained a judgment against Joseph Jarmain, the son of Joseph Jarmain, and the attorney of the execution-creditor, by mistake, informed the Sheriff of Middlesex that the judgment-debtor resided at 3, Prospect Place, Church Street, Chelsea, which was, however, in fact the residence of the debtor's father. That information was so given by the attorney by way of indorsement on the writ of *fieri facias*, sued out of the Court of Common Pleas by him and delivered for execution to the Sheriff, who proceeded to No. 3, Prospect Place, Church Street, Chelsea, and seized the goods of the father, who thereupon sued the Sheriff and the execution-creditor (Heenan) in an action of trespass. For the Sheriff, it was contended that, inasmuch as the writ was against Joseph Jarmain simply, not adding "the younger," it should *primâ facie* be taken to mean Joseph Jarmain, the father, and, therefore, that the Sheriff was protected by the writ. For the execution-creditor, it was argued that, inasmuch as he had not interfered in the original action further than giving instructions to his

(*t*) 5 Beng. L. R. Appx. 71.

(*u*) 6 Man. and Gr. 827 S. C. 1 D. and L. 769. 7 Scott N. R. 663. See also *Coomer* v. *Latham*, 16 M. and W. 713, *Wally* v. *McConnell*, 13 Q. B. 903.

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attorney to sue Joseph Jarmain, the son, he was not liable for the wrongful seizure occasioned by the erroneous information given by his attorney in pure mistake. But the Court held both the Sheriff and the execution-creditor to be liable. As to the Sheriff, Tindal, C.J., said:—"Although, therefore the want of the addition ("the younger") imports, *primâ facie*, that the son is not intended, it is no more than a *primâ facie* intendment, for the son may be the person really intended by the writ. The situation, therefore, of the Sheriff, under such a state of circumstances, seems to be the same as if he had received a writ against a defendant described by the name of J. S. in the writ, and there appeared, at the time of executing the writ, to be two persons of the name of J. S., in which case there can be no doubt but that the Sheriff would be liable, if, through inadvertency or mistake, he took the person or the goods of the wrong J. S. The authorities from the Year Books, cited in 2 Rolle's Abridgment, 552, l. 17, 25, and 30, are clear and express to that point, in the last of which references it is laid down that the Sheriff is liable though the taking be by the showing of the party to the suit." With regard to the execution-creditor, Tindal, C.J., said:—"As to the Defendant Heenan, the only question in his case is, whether he is bound by the act of his attorney, in giving the directions to the Sheriff to take the goods of the plaintiff. That the plaintiff in the original action is liable in trespass, if, by *his own* order, the Sheriff takes the goods of a stranger in execution, is clear law, 2 Rolle's Abr. 553, l. 10, pl. 5. And it appears to us that the direction, given by the attorney, is a direction given by an agent within the scope of his authority, and binds the principal (*v*). The attorney has the general conduct of the cause; he is the only person with whom the Sheriff has communication: and, in taking a step essentially for the benefit of his client, that is, for the obtaining the fruit of his judgment, we think that he cannot be held to have acted beyond his authority, though he has

(*v*) *See* per Tindal, C.J., in *Wilson* v. *Tumman*, 6. Man. and Gr. 244 to the same effect; and S. C. 6 Scott N. R. 905.

miscarried in its execution, and, when it is argued that he cannot be his agent in giving *false* information, the answer is that, if he be his agent to do the particular act, the client must stand to the consequences if he act inadvertently or ignorantly; as in *Parsons* v. *Lloyd* (*w*), where trespass was held maintainable against the client for causing the plaintiff to be arrested under a writ which was afterwards set aside for irregularity. It was argued, in that case, that suing out the writ was the immediate act of the attorney, that he had not been retained to sue out a void or irregular writ, and that it was, therefore, not within the scope of his authority. But it was answered by DeGrey, C.J., that 'the act of the attorney is the act of his client'; and by Gould, J., 'the plaintiff should have employed a more skilful and diligent attorney, for the act of the attorney, in point of law, is the act of the party his client'."

The agency of the attorney for the client and the responsibility of both were strongly exemplified in *Bates* v. *Pilling* (*x*). *A* employed *B*, an attorney, to enforce payment of a debt. *B* directed his agent to sue out a *justicies* in the County Court. Before the return of the *justicies*, the debtor paid the debt and costs to *B*. His agent, not knowing of such payment, afterwards entered up judgment in the County Court, although the defendant had not appeared, and sued out execution under which the goods of the debtor were seized. It was held that an action of trespass lay against both *A*, the client, and *B*, the attorney. Abbott, C.J., said that *A*, the original plaintiff, was answerable for the act of *B*, his attorney, and that *B* and his agent should be considered as one person, and, that being so, according to *Barker* v. *Braham*, the client and the attorney were liable as trespassers.

In *Barker* v. *Braham* (*y*) DeGrey, C.J., said: "A Sheriff or his officers, or any acting under his or their authority, may" (*i.e.*, if they strictly pursue the exigency of the writ)

(*w*) 3 Wilson 341. (*x*) 6 B. and C. 38.
(*y*) 3 Wils. 376.

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"justify themselves by pleading the writ only, because *that* is sufficient for their excuse, although there be no judgment or record to support or warrant such writ; but if a stranger interposes and sets the Sheriff to do an execution, he must take care to find a record that warrants the writ, and must plead it; so must the party himself, at whose suit such an execution is made (*z*). No trespass can be excused but what is inevitable; see the case of *Parsons* v. *Lloyd*, adjudged in the last term." And again he said: "to apply what is said and laid down in the books upon this subject to the present case; they say, whoever procures, commands, assists, assents, &c., is a trespasser; here the client commands the attorney, the attorney *actually* commands the Sheriff's officer; the real commander is the attorney, the nominal commander is the plaintiff in the action" (*i.e.*, the execution-creditor) "so attorney and client are both principals."

In the case referred to us by the District Judge, there may have been, and probably was, a warrant to seize the rice in husk, which warrant would protect the officer of the Court, but there was not any decree to support the warrant. There was a decree against Jatkyá, but that would not support a warrant to seize rice which belongs to Hatá Dipáji, the respondent, and inasmuch as the seizure was made at the instance of Váná, the execution-creditor (appellant), he has committed a trespass and is responsible in damages to Hatá Dipáji.

Cronshaw v. *Chapman* (*aa*) does not conflict with this view. It is true that a letter of ambiguous character was there written by the execution-creditor to the bailiff, but the Court held that it did not direct the bailiff to do anything more than his ordinary duty under a *fieri facias*, which, being against the goods of J. C., did not warrant a seizure of the goods of T. C., and there being no sufficient evidence to show that the latter seizure was made at the instance of the execution-creditor, he was held not liable.

(*z*) See *Brooks* v. *Hodgkinson* 29 L, J. Exch. 93.

(*aa*) 31 L. J. Exch. 277.

Walker v. *Odling* (*bb*) and *Woollan* v. *Wright* (*cc*) do not aid the execution-creditor here. They show that an execution-creditor is not liable for a sale by the Sheriff under an inter pleader order, and in *Waler* v. *Odling* the rightful owner of the goods recovered damages in respect of a seizure and detention at the instance of the execution-debtor, but not for the subsequent sale under the interpleader order, made at the instance of the Sheriff after the seizure and during the detention. That order was held to be not "so direct a consequence of any act" of the execution-creditor as to render him liable. *Lock* v. *Ashton* (*dd*) proceeded upon a similar principle, the defendant being held not liable for a remand, which was the judicial act of the Magistrate.

We are of opinion that the decree of the District Judge should be reversed by him, and that he should restore the decree of the Subordinate Judge, and direct the defendant, Váná Jagannáthji, to pay the costs of the suit and appeal and of this reference, if any.

We are much indebted to Mr. Dhirajlál Mathurádás and Mr. Shántárám Náráyan for their able arguments in this case, made *pro bono publico et sine honorario, sed non sine honore.*

(*bb*) 1 Hurl. and C. 621. (*cc*) *Ibid* 554.

(*dd*) 12 Q. B. 871.