

APPELLATE CIVIL.

(52)

Before Mr. Justice Melvill and Mr. Justice Kemball.

NARANDAS, PRIOR ATTACHING CREDITOR, v. BAI MANCHHA,
 SUBSEQUENT ATTACHING CREDITOR.*

1879
 April 8.

*Civil Procedure Code (Act VIII) of 1859 Sec. 270, and Act X of 1877, Sec. 295—
 Change of the law pending execution of decree—Prior and subsequent attaching
 Creditor—General Clause Act I of 1868, Sec. 76.*

A judgment creditor in execution of his decree attached certain property belonging to his judgment-debtor while Act VIII of 1859 was in force. This property was ultimately sold on the 9th of January 1879, that is, after the new Code of Civil Procedure (Act X of 1877) came into operation. Two days before the sale another judgment-creditor applied to have his decree satisfied out of the same property by a rateable distribution of the proceeds which might be realized :—

Held that the prior attaching creditor by his attachment under the Code of 1859 acquired, under section 270 of that Code, a right to have his decree first satisfied in full, and that he was not deprived of this right by the change in the law introduced by section 295 of the new Code of 1877.

THIS was a reference, under section 617 of the Code of Civil Procedure (Act X of 1877), by Rao Saheb H. Satyavadi, Subordinate Judge of Anklesvar, in the district of Surat, for the orders of the High Court.

The following statement of the facts of the case was submitted by him :—

“The applicant Narandas presented in application for execution of his decree against the judgment-debtor, and certain property was attached. The attachment was raised on the application of one Amarchand. The applicant then filed a regular suit to set aside the order, and to have his right declared to attach the property, wherein the applicant obtained a decree. The applicant then presented his present application, (No. 3892 of 1875), and got the property attached. In the meantime Amarchand having appealed to the District Court and then to the High Court, the execution was stayed. At last, the decree of the Court being lately confirmed in the special appeal to the High Court, the execution was further proceeded with, and the attached property was sold on 9th January 1879. Thus the attachment under

* Civil Reference, No. 4 of 1879.

1879
 NARANDAS
 v.
 BAI
 MANCHHA.

application No. 3892 was made when the old Procedure Code (VIII of 1859) was in force, but all other proceedings together with the sale were taken after the present Act (X of 1877) came into force.

Application No. 84 of 1879 was presented by Bai Manchha against the same judgment-debtor on the 7th January 1879, *i. e.* before any money was realized under application No. 3892 of 1875.

The applications are both for money decrees. The applicant in application No. 84 of 1879 urges that under the new Code, section 295, the assets realized by the sale of the property attached under application No. 3892 of 1875 should be rateably divided. The applicant in application No. 3892 contends that as the property was attached under the old Code, his decree should be first satisfied under the old Code, *sec.* 270.

The question is, whether the old Code, *sec.* 270, or the new Code, *sec.* 295, should apply to the matter.

I am of opinion that the new Code, *sec.* 295, should apply. For the new Code, *sec.* 3, distinctly provides that nothing in the new Code shall affect the procedure *prior to decree* in suits and appeals presented before 1st October 1877. The proceedings in question are not proceedings *prior to decree*, and, therefore, the new Code should apply to the matter. For Narandas it is contended that the present question is not one of procedure but of right, that Narandas by attaching the property under the old Act has already secured a right under the old Act, *sec.* 270, to get his decree first satisfied, and that a right once obtained cannot be avoided by a later enactment, unless there is some special provision. But if the old Act, *sec.* 270, gives a right at all, the right accrues, not from the date of attachment but from the date of sale; for, under the old Act, if money were realized by the sale of some other property, or otherwise, the first attaching creditor would not have any prior right. His prior right accrues only when the property attached by him is sold, and relates only to the proceeds of the sale of that property. So his right under section 270 should properly date on the day of sale. But in the present case the sale took place after the new Code came into force, and the procedure after attachment up to sale actually applied, was that under the new Code, *i. e.*, the enquiry under section 287, &c. For

these reasons I am of opinion that the proceeds of the sale should be rateably divided between the two applicants under the new Code, sec. 295, and contingently upon the orders of the High Court have ordered accordingly.

There was no appearance for either party.

Per Curiam.—The Court is of opinion that by his attachment, under the old Code, Narandas acquired the right to have his decree first satisfied in full, and that he was not deprived of this right by the change in the law. See section 6, Act I of 1868.

Order accordingly

1879
 NARANDAS
 v.
 BAI
 MANCHHA.

APPELLATE CIVIL.

(53)

Before Mr. Justice West and Mr. Justice Pinhey.

BALKRISHNA APPLICANT, v. LAKSHMAN, OPPONENT.*

Civil Procedure Code (Act X of 1877), Sec. 525—Arbitration—Award—Filing—Court of Subordinate Judge—Court of Small Causes.

A Subordinate Judge, although invested with the jurisdiction of a Judge of a Court of Small Causes, does not on that account become a Judge of a Court of Small causes, nor his Court such a Court within the meaning of the Civil Procedure Code. He, therefore, has power, within the limits of his ordinary pecuniary jurisdiction, to receive and file awards of arbitrators under section 525 of the Civil Procedure Code (Act X of 1877).

THIS was application, in the exercise of the High Court's extraordinary jurisdiction, for the reversal of an order of the Subordinate Judge of Mahad refusing to receive and file an award of arbitrators.

Madhavrav Krishna for the applicant.—The Subordinate Judge was in error in refusing to receive our award and file it. His being invested with Small Cause Court powers does not disentitle him from exercising his general powers; nor does it make him a Small Cause Court Judge.

WEST, J.—It does not appear that the application addressed to the Subordinate Judge at Mahad, which has been placed before us with the petition of the applicant, was actually presented to the Subordinate Judge. What the applicant says in his petition is that

* Extraordinary Application, No. 139 of 1878.