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or not the rule is *ultra vires*, we defer doing so until the question directly arises in some other case.

We reply to the Subordinate Judge that we regard the bond as constituting but one instrument, and as properly stamped, and not open to objection under ss. 7, 12, 13 or 14 of the Indian Stamp Act I of 1879.

5 B. 198.

APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice F. D. Melvill.

KRISHNASHANKAR (*Decree-holder*) v. CHANDRASHANKAR
(*Judgment-debtor*)* [23rd November, 1880.]

Decree—Execution—Rateable distribution of assets—Civil Procedure Code (Act X of 1877), s. 295.

The salary of a karkun, who was employed in the Second Class Subordinate Judge's Court of Anklesvar, was attached, in execution of a decree of the First Class Subordinate Judge's Court of Surat, by an order issued by the Surat Court, directing the Anklesvar Court to stop and remit, every month, a moiety of the said karkun's salary to itself (the Surat Court), until satisfaction of the decree. While the decree of the Surat Court was thus in course of execution, another judgment-creditor of the karkun, who had obtained a decree in the Anklesvar Court, applied to it for a rateable distribution of the moiety between himself and the Surat decree-holder, under s. 295 of the Civil Procedure Code, Act X of 1877.

Held that the application was not sustainable, inasmuch as the decree of the Surat Court was being executed by itself and not by the Anklesvar Court to which the order of attachment was sent as the head of a department or as "the officer whose duty it was to disburse the salary," and not as a Court executing the decree of another Court.

Jetha Madhavji v. Nujarali Abramji (1) followed.

[F., 18 B. 456; 6 M. 357 (359); R., L.B.R. (1893—1900), 161 (167).]

THIS case was referred for the opinion of the High Court by Rao Saheb Ranchorlal Desai, Second Class Subordinate Judge of Anklesvar, under s. 617 of Act X of 1877. He stated the case as follows:—

[199] "A decree in suit No. 664 of 1861 was passed in the Court of the First Class Subordinate Judge of Surat against one Chandrashankar Sudashankar, who is now a karkun on the establishment of this Court. The decree-holder, Maneklal Jeychand, having applied for execution in the Court of the First Class Subordinate Judge against one-half of the salary of the judgment-debtor, an order, dated 10th February 1880, has been sent to this Court, directing that one-half of the salary of the said karkun be withheld every month until the sum of Rs. 181-4-3, *i.e.*, the amount of the decree with costs, is paid up. Accordingly, one-half of the said karkun's salary for the months of February, March and April was withheld and remitted to the First Class Subordinate Judge; but before the pay of the said karkun for the months of May and June was received from the treasury, *i.e.*, on the 24th June 1880, the *darkhast* now under consideration was filed in this Court, wherein the decree-holder has prayed that his decree should be executed against the salary of the said karkun. Hence the question arises whether a decree-holder, who has

* Civil Reference No. 24 of 1880.

(1) 4 B. 472.

applied for execution of his decree to the Civil Court which has, under s. 268 of the Civil Procedure Code (Act X of 1877) received an order from another Civil Court to withhold every month one-half of the salary of its karkun until further orders, can, the judgment-debtor being one and the same person, claim under s. 295, Civil Procedure Code, a proportionate share in the portion of the salary so withheld?

"The decision of this question depends upon the construction that may be placed upon the words of s. 295 of the Code of Civil Procedure.

* * * * * The intention of the Legislature in enacting s. 295, Civil Procedure Code, so far as I can gather, is to allow all the decree-holders against one and the same judgment-debtor, who are vigilant enough to come to the Court, to get a proportionate share out of the assets that may be realized by the execution of one of the decrees, and not to give a preferential right to an execution-creditor who fortunately happens to be first, as it was the case under the old Code (s. 270).

"The words 'applied to the Court, by which such assets are held for execution of decrees for money against the same judgment-[200] debtor,' which occur in the s. 295, Civil Procedure Code, are, I humbly submit, wide enough to include a case like the present, so as to extend to it the benefits provided thereby to subsequent execution-creditors, and this construction seems to be in furtherance of the intention of the Legislature.

"If the words of the said section be taken to mean that only the decree-holders who have applied for execution of their decrees to the Court, which issued the prohibitory order to another Court to withhold payment of the salary to its karkun, can claim the benefits provided thereby, and not those who have applied for execution of their decrees to the Court, which has withheld the payment, a holder of a decree of another Court will acquire a prior right to satisfy his decree, by his simply moving that Court to attach the salary of a karkun of another Court, while the persons who have obtained their decrees in the Court where the karkun is employed, will have to wait for some years. This construction thus seems to be inconsistent with the intention of the Legislature.

"The practice of this Court in such cases has hitherto been to divide rateably the salary withheld among the decree-holders who have applied for execution of their decrees to either of the two Courts. As to this practice, though I am not sanguine about its correctness, I am not prepared to say that it is not warranted by the provisions of s. 295 of the Civil Procedure Code.....

"Considering that the practice of the several subordinate Courts differs on this point, and that it is of general importance, I deem this reference necessary.

"My opinion on the question hereby referred is in the affirmative."

The parties did not appear in the High Court, either in person or by pleader.

The following is the judgment of the Court :—

JUDGMENT.

WESTROPP, C. J.—The decree in suit No. 664 of 1861 in the Court of the First Class Subordinate Judge of Surat, is being executed by that Court, and not by the Second Class Subordinate Judge of Anklesvar, to whom the order of the 10th February [201] 1880, by the Surat Court, to stop and remit to the Surat Court a moiety of the salary of a karkun in the Anklesvar Court has been sent—not as a Court executing the decree of another Court—but as the head of a

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department, or, to adopt the language of s. 268 of Act X of 1877 (as amended by Act XII of 1879), as "the officer whose duty it is to disburse the salary." We, therefore, think that the application of certain persons who have recovered decrees in the Anklesvar Court to that Court to divide such moiety rateably between them and the Surat decree-holder, is not sustainable. That view is in accordance with the decision in *Jetha Madhavji v. Nujarali Abramji* (1), which was a civil reference from the Court of Small Causes at Ahmedabad. The portion of the reasoning of the learned Judge of that Court which this Court adopted, and on which it acted, is not stated in the report, but it was as follows:—"The words in s. 295 'more persons than one' must, I think, be taken to mean more decree-holders than one of the same Court, and do not include outsiders or decree-holders of other Courts, except, perhaps, those appearing on certificates under the provisions of chap. XIX (Act X of 1877 as amended by Act XII of 1879). This construction, I submit, is warranted by the words of s. 295, 'have, prior to the realization, applied to the Court by which such assets are held, for execution of decrees for money against the same judgment-debtor.' These words clearly indicate that those decree-holders only could share in the rateable distribution who have actually applied for execution of their decrees to the Court holding the assets." In the present case we, for the reason already above given, deem the Surat Court to be the Court holding the assets, and, prior to the realization thereof, there has not been any application to that Court by the Anklesvar decree-holders, who, therefore, are not entitled to share in the assets hitherto realized.

5 B. 202.

[202] APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice F. D. Melvill.*

In re KHAJA PATTHANJI, Applicant.* [7th September, 1880.]

Certificate of sale, application for—Limitation—Act XV of 1877, Sch. I, Art. 178—Civil Procedure Codes—Act VIII of 1859, ss. 256, 257, 259—Act X of 1877, s. 316—Purchaser's right to certificate of sale.

The applicant purchased certain land at a Court sale on 17th February 1876. The sale was confirmed on the 20th March of the same year. The purchaser did not apply for a certificate of sale until the 10th March 1880.

Held, that the application was barred by the Limitation Act, XV of 1877, sch. I, art. 178.

Held, also, that the purchaser's right to a certificate of sale accrued to him under Ss. 256, 257 and 259 of the Civil Procedure Code, Act VIII of 1859, on the 10th March 1876, when the sale was confirmed.

[Diss., 6 B. 586; 8 B. 377; Appl., 5 B. 206; R., 8 C. 367=10 C.L.R. 441.]

THIS case was referred for the opinion of the High Court by Rao Sahab Venkatrav Luxmaya, Second Class Subordinate Judge of Muddebihal, in the district of Kaladgi, under s. 617 of Act X of 1877. He stated the case as follows:—

"In original suit No. 214 of 1875 of this Court, one Andanepa obtained a money decree against one Balapa and another, and, in execution

* Civil Reference No. 11 of 1880.

(1) 4 B. 472.