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Order XXI, Rule 58 applies in terms to any property attached in execution and thus relates to debts so attached. The sum of Rs. 594 appearing due, in one set of the Garnishees' books, to the judgment-debtor was not liable to attachment if it was in fact cancelled by another debt due by the judgment-debtor to the Garnishee in another set of books. If it was not so cancelled it was attachable property constructively in the possession of the judgment-debtor. In another view also the question raised by the Garnishee called for investigation under section 278 and the following sections, for the debt attached could be regarded as property in the possession of the Garnishee in trust for the judgment-debtor, see *Vinall v. De Pass*⁽¹⁾ per Lord Halsbury. We dismiss the appeal without costs.

Appeal dismissed.

G. B. R.

⁽¹⁾ [1892] A. C. 90 at p. 95.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

SHAH VELCHAND CHHAGANLAL, PLAINTIFF, v. LIEUTENANT
R. C. C. LISTON, DEFENDANT.*

1914.

March 26.

Civil Procedure Code (Act V of 1908), sections 115 and 151—Money-lender and debtor—Arbitrator's award—Decree without inquiry into the nature of the award—Manual of High Courts' Circulars, Chapter VI, para. 2—Inquiry—Real point of difference—Decree set aside—Abuse of judicial process.

The plaintiff, a money-lender, filed in Court an arbitrator's award passed against the defendant debtor and prayed for a decree in the terms of the award. The Court having presumed that there was a real point of difference between the parties passed a decree in the terms of the award without instituting inquiry

* Application No. 271 of 1913 under extraordinary jurisdiction.

directed by a circular of the High Court (Manual of High Courts' Circulars, Chapter VI, para. 2, page 181⁽¹⁾).

Held, setting aside the decree under sections 115 and 151 of the Civil Procedure Code (Act V of 1908), that there was an abuse of judicial process.

APPLICATION under the extraordinary jurisdiction in the form of a letter, dated the 6th November 1913, from E. Clements, District Judge of Ahmedabad, requesting the Court under section 115 and Schedule II, Rule 21 of the Civil Procedure Code (Act V of 1908) to take action against the decree of H. A. Mohile, Additional First Class Subordinate Judge of Ahmedabad.

The plaintiff, a money-lender of Baroda, had monetary dealings with the defendant, a Lieutenant in a British Regiment. In the month of July 1913 the plaintiff's agent saw the defendant at Aurangabad and took from him a promissory note, dated the 9th July 1913, for Rs. 4,931 which sum was made up of past advances and interest. The promissory note was made payable in Ahmedabad or Baroda. On the 11th July 1913 the plaintiff's agent obtained two other documents from the defendant, one in the form of a reference to arbitration whereby the plaintiff and the defendant agreed to refer

(1) Manual of High Courts' Circulars, Chapter VI, para. 2, page 181 is as follows :—

2. In some parts of the Presidency, certain classes of money-lenders are in the habit of lending money to impecunious Military and Civil officers and to poor agriculturists, not on bonds or promissory notes but on arbitration awards, and the loan, the amount of which is usually much less than the amount stated as advanced in and payable by the award, is not advanced until after these arbitration awards are actually filed in Civil Courts and decrees passed thereon. The object of this procedure is apparently to oust the jurisdiction of the Civil Courts and prevent them from inquiring into the terms of the transaction. It has been found that some Judges have been in the habit of ordering these so-called arbitration awards to be filed and passing decrees thereon without enquiring into their nature. Their Lordships therefore desire to impress upon the Judges that it is the duty of every Judge, before he allows arbitration awards to be filed in Court, to satisfy himself that there has been some point of real difference which was submitted to arbitration and that there was an arbitration on that point of real difference.

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the dealings between them to Bhailal Nandlal, a pleader of Ahmedabad, and requested him to settle the accounts and to pass an award in favour of the plaintiff on the strength of the said promissory note. The other document was a Vakilpatra by the defendant appointing Velchand Umedchand of Ahmedabad as his pleader authorizing him to appear in the Court of the First Class Subordinate Judge of Ahmedabad and to admit the award which might be passed against him by the said Bhailal Nandlal. Both the said documents were in printed forms. On the 16th July 1913 the plaintiff's agent filed a suit against the defendant in the Court of the Additional First Class Subordinate Judge of Ahmedabad stating in the plaint that in order to settle the dispute between the parties with respect to the promissory note of the 9th July 1913, the parties referred the dispute to the arbitration of Bhailal Nandlal on the 11th July 1913 and the arbitrator made his award on the 16th July 1913 directing the defendant to pay to the plaintiff at Ahmedabad Rs. 4,931 by instalments of Rs. 75 each and Rs. 30 for pleader's fees. The plaint prayed for a decree in the terms of the award. On the 21st July 1913 the plaintiff's agent made an affidavit stating that the defendant had no means to pay off the debt. The Subordinate Judge, on the 22nd July 1913, ordered that the award "be filed and decree be drawn up in the terms thereof". He delivered the following judgment:—

Defendant appears by Mr. Velchand and was willing to abide by the terms of the award (Exhibit 5). Exhibit 8 is the award passed by pleader Mr. Bhailal. There appears to be a real point of difference between the plaintiff and the defendant, *viz.*, the amount due by the latter to the former and the amount of instalments which the defendant should pay to the plaintiff. The award therefore fulfils the conditions laid down in para. 2 of clause VI of the New High Court Circulars, page 181, and it deserves to be filed.

The said proceedings having been brought to the notice of the Court by the District Judge of Ahmedabad as aforesaid, the Court moved in the matter under sec-

tions 115 and 151 of the Civil Procedure Code (Act V of 1908).

There was no appearance for the parties.

SCOTT, C. J. :—In this case the Subordinate Judge Mr. Mohile has disregarded a circular of this Court and allowed a most transparent abuse of judicial process. A money-lender obtains from an Officer at Aurangabad a promissory note for Rs. 4,931, payable in Ahmedabad or in Baroda, with interest, dated the 9th of July 1913, and under date the 11th of July two other documents are obtained from the Officer, one in the form of a reference to arbitration whereby the Officer and the money-lender agree to refer the matter of money-dealings between them to Bhailal Nandlal, pleader of Ahmedabad, and nominate him arbitrator to settle the accounts and pass a judgment against the Officer in favour of the money-lender on the strength of the promissory note of the 9th of July. The other document is a Vakilpatra by the Officer appointing Velchand Umedchand of Ahmedabad as his pleader to authorize him to appear in the Court of the First Class Subordinate Judge of Ahmedabad and admit the award that may be passed against him by Bhailal Nandlal in the matter of money transactions between himself and Velchand Chhaganlal. Both the last-mentioned documents are on printed forms supplied presumably by the money-lender. Then a plaint is filed on the 16th of July by the money-lender's Mukhtyar stating that in order to settle the dispute relating to the promissory note of the 9th of July the parties appointed the pleader as Panch on the 11th, who decided the matter and made his award on the 16th directing that the defendant should pay the plaintiff at Ahmedabad Rs. 4,931 in cash by instalments, and Rs. 30 for pleader's fee ; and the plaint prayed for a decree in terms of the award. Then there is an affidavit of the agent of the money-lender, dated the 21st of July, stating that as the defendant has at

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present no means to pay off the debt, we appointed a Panch, and the Panch fixed instalments as mentioned above.

Mr. Mohile, the Subordinate Judge, on the 22nd of July entertained the application to pass a decree in accordance with the so-called award. He says:—

There appears to be a real point of difference between the plaintiff and the defendant, that the amount due by the latter to the former and the amount of instalments which the defendant should pay to the plaintiff.

It was quite clear upon the proceedings that there was no point of difference between the parties and no dispute as to the amount of instalments which should be paid. We regret that the First Class Subordinate Judge should have allowed his Court to be used for a proceeding of this kind, and it reflects but little credit on his judicial capacity that he should have permitted it. We set aside the decree under sections 115 and 151 of the Code of Civil Procedure.

Decree set aside.

G. B. R.

CRIMINAL REVISION.

FULL BENCH.

*Before Sir Basil Scott, Kt., Chief Justice, Mr. Justice Batchelor and
Mr. Justice Beaman.*

*In ré PUNAMCHAND MANEKLAL.**

1914.

March 31.

*Criminal Procedure Code (Act V of 1898), section 195, clauses (b) and (c)—
Income-Tax Collector—Revenue Court—Sanction to prosecute—Indian Penal
Code (Act XLV of 1860), sections 193, 196, 199, 471—Offences committed
before the Income-Tax Collector.*

An Income-Tax Collector is a Revenue Court within the meaning of that term as used in clauses (b) and (c) of section 195 of the Criminal Procedure Code, 1898.

* Criminal Application for Revision No. 5 of 1914.