Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mirza Mahomed Aga Ali Khan Bahadoor v. *the Widow of Balmakund and others, from the Court of the Judicial Commissioner, Oude; delivered 22nd June* 1876.

PRESENT:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS is an action brought to recover Rs. 12,420, being the value of a one-seventh share of Jaidyal, a judgment debtor, in the property left by Ishri Dass, his father. The allegation in the plaint is that this amount is due from the Defendants, who hold the property. The claim is based on a decree which the Plaintiff obtained in the Civil Court at Lucknow on the 20th November 1863, for Rs. 14,460, against the aforesaid Jaidyal, who died, leaving the decree against him unsatisfied; and the plaint alleges that that decree gives the Plaintiff a right to institute the present suit. The plaint states that: "The property of the judgment "debtor being one seventh share in the legacy "of his father, Ishri Dass is in possession "of the Defendants, his brothers. Bisheshoor "Pershad, one of the brothers of the judgment "debtor, the Defendant No. 5, realised the "debts due to the saltpetre firm of his father "to the amount of Rs. 14,280. 6, and the "Plaintiff obtained a decree from the Civil "Court of Lucknow on the 7th September 1866 "for Rs. 2,040. 0. 10, equivalent to one-seventh "share of the judgment debtor in the collections

" made by Defendant No. 5, and recovered the " amount of this decree. This decree was con- " firmed by the Judicial Commissioner on the " 16th March 1867." The original judgment therefore was reduced from Rs. 14,460 to the amount sought to be recovered. The plaint proceeds: "The Plaintiff now sues the De- " fendants, who hold the property of the " judgment debtor in their possession, for that " portion of the decree against Jaidyal which " has not been satisfied, and prays that, after " a due enquiry, adjustment of accounts, and " the determination of the value of the legacy " of Ishri Dass out of the share which may be " found due to the deceased judgment debtor, " the amount claimed may be decreed to Plain- " tiff with costs of the Court, and interest up " to the date of realization." The Defendants put in written statements; one of them stated that the Plaintiff was not the legal representative of Jaidyal, and therefore could not sue, and the other said that there was no privity. The real question in this case is, whether the decree gave the Plaintiff a right to institute the present suit; in other words, whether a judgment creditor has by virtue of the judgment, without execution, a right to the property of the judgment debtor, whether it consists in lands, in movable property, or in debts. The Plaintiff contends that by virtue of this judgment he became entitled to the property of his judgment debtor, and was entitled to recover it from the persons in whose hands it was.

The Civil Judge who tried the cause in the first instance dismissed the suit. Upon appeal to the Commissioner, he held that the suit was maintainable, and awarded to the Plaintiff the amount claimed, on the ground that certain books had not been produced, and that he was entitled in consequence, under

section 170 of Act VIII. of 1859, to give a decree to the Plaintiff for the full amount claimed.

The case afterwards went before the Judicial Commissioner, who reversed the decision of the Commissioner. He held that the decree of the Civil Judge in the first instance was the correct one; and that the judgment which the Plaintiff had recovered against Jaidyal did not vest in him the property of Jaidyal, or the value of it. Their Lordships are of opinion that the view taken by the Judicial Commissioner was correct, and that a judgment does not vest in a judgment creditor any portion of the property of his judgment debtor. It gives him a right to have the judgment executed, but until execution the property of the judgment debtor does not vest in the judgment creditor simply by virtue of the judgment. That is so according to the law of this country, and it is also the case under the Code of Civil Procedure, Act VIII. of 1859, which is the law in force in India. By section 206 it is enacted that no moneys which are payable under a decree are to pass into the hands of the judgment creditor except through the intervention of the Court. It is expressly provided that "all moneys payable "under a decree shall be paid into the Court "whose duty it is to execute the decree, unless "such Court or the Court which passed the "decree shall otherwise direct." A judgment debtor is not justified in paying the money to the judgment creditor unless the Court makes an order to that effect; but he is bound to pay it into Court, so that there shall be no dispute afterwards as to whether the money has or has not been paid over to the judgment creditor. Further, it is enacted that "no adjustment of a "decree in part or in whole shall be recognized "by the Court unless such adjustment be made "through the Court or be certified to the Court

" by the person in whose favour the decree has " been made or to whom it has been trans- " ferred." And it has been held upon that section that if a judgment debtor chooses to pay the money otherwise than through the Court, he must take the risk of being compelled to pay it over again.

Now, if this suit could be maintained, how is the money to get into Court? If the judgment of the Commissioner be upheld, the Plaintiff would be entitled to levy the amount against the Defendants in the suit, and the money would never pass through the Court at all. Therefore, even looking at that section of the Act alone, it would be clear that this suit cannot be maintained. But the Act provides, section 201, that " if the decree be for money it shall be enforced " by the imprisonment of the party against " whom the decree is made, or by the attach- " ment and sale of his property, or by both, if " necessary." Therefore, the decree is to be satisfied, not by bringing an action against the debtors of the judgment debtor, or those who hold his property, but it is to be enforced by the attachment and sale of the property of the judgment debtor. Then the Act points out the mode in which the property is to be attached and the different classes of property which are liable to be attached. By section 205, " the " following property is liable to attachment and " sale in execution of a decree, namely, lands, " houses, goods, money, bank notes, cheques, " bills of exchange, promissory notes, Govern- " ment securities, bonds or other securities for " money, debts, shares," and so on. It is not clear what the one seventh of the legacy alleged to be in possession of the Defendants was: whether it consisted of lands or of money. If it was land or money it was liable to be attached under section 205, and if it was a debt due from

the Defendants to Jaidyal it was also liable to be attached. The Act having stated what property is liable to attachment, goes on specifically to point out the mode in which the property is to be attached. If it is land, it is to be attached in a particular manner; if it is goods, it is to be attached in another manner; if it is a debt, it is to be attached in the manner provided by section 236. By section 236, "Where the property shall "consist of debts not being negotiable instru- "ments, the attachment shall be made by a "written order, prohibiting the creditor from "receiving the debts, and the debtor from "making payment thereof to any person whom- "soever, until the further order of the Court." Having described the property liable to be attached, and the mode of attachment, the Act proceeds to point out how sales are to be conducted.

It has been pointed out by Mr. Leith in the argument that if an action such as this could be supported, all the provisions of the code would be frustrated.

By section 216 of the Act it is provided that "if an interval of more than one year shall have "elapsed between the date of the decree and the "application for its execution, or if the en- "forcement of the decree be applied for against "the heir or representative of an original party "to the suit, the Court shall issue a notice to "the party against whom execution may be "applied for, requiring him to show cause, "within a limited period to be fixed by the "Court, why the decree should not be executed "against him."

Now the decree against Ishri Dass was obtained as far back as the 20th November 1863. If the Plaintiff had applied for execution on the same date as that on which he commenced the suit, a much longer period than a year would have

elapsed between the date of the decree and the date of the application for execution. Then it would have been necessary for the Court to issue a notice to the party against whom execution was applied for, requiring him to show cause, within a limited period to be fixed upon, why the decree should not be executed against him. It would have been necessary in this case, Jaidyal being dead, to have called upon some one who was his representative, to show cause why the judgment should not be executed, because after a year it would be presumed that the judgment might have been satisfied. But then there is the provision in section 216 that "no "such notice shall be necessary in consequence "of an interval of more than one year having "elapsed between the date of the decree and "the application for execution, if the application "be made within one year from the date of the "last order passed on any previous application "for execution." It appears that an application was made for a certificate from the Court at Lucknow, in which the decree had been passed, to the Court at Sultanpore, for the purpose of having it executed. Many objections were made by the person against whom the execution was to issue, and Mr. Young, the Deputy Commissioner, on the 29th July 1868, made this order: "Judgment creditor now says "Jaidyal's claim consists of debts and land; "on his making proper application these can be "attached; but in the event of Balmakoond "declining to pay, I am clearly of opinion that "the only way to compel him is by regular "suit, and I shall then be ready to appoint a "receiver. Judgment creditor's application is "refused, and case to be struck off file of "pending cases." That order was passed on the 29th July 1868, and it appears to be the last order that was passed upon an application

for execution. This action was not commenced until the 25th April 1871, which was more than two years after that order had been passed. The Plaintiff could not have obtained execution of this judgment if he had applied for execution without proceeding under section 216, and having Jaidyal's representative summoned to show cause why execution should not issue. Then can he commence this action, two years and more after that last order was passed, without calling upon anyone representing Jaidyal to show cause why he should not levy this money? The presumption is, that after this period the debt has been satisfied. The Plaintiff could not have executed the decree until he had given notice to some one representing Jaidyal to show cause why the execution should not issue; but if this action can be maintained, then, as Mr. Leith has very properly observed, the Plaintiff would be enabled to enforce his decree behind the back of and without notice to the representatives of Jaidyal.

Their Lordships are clearly of opinion that in this case the decree did not vest in the Plaintiff any right to the property for which he is sueing, and consequently that he cannot maintain the suit. The Judicial Commissioner has very clearly laid that down in his judgment. He says, at page 139:—"This suit, as laid, is not a "suit to establish the Plaintiff's judgment "debtor's title to certain definite property "previously attached, but is preferred on the "assumption that the Plaintiff, by virtue of "his decree, occupies the position of his judg- "ment debtor, and is therefore entitled to "establish his claim to a certain share of "the estate left by his judgment debtor's "father." In another part of his judgmen the says, and their Lordships quite agree with him in that remark, that "if every decree

" holder could proceed by regular suit to " enforce his decree, all the provisions in " the Civil Procedure Code in regard to execu- " tions of decrees would be of no avail. But " it is evident to the Court that where the " Legislature has prescribed a particular mode " of enforcing a right created by a decree, the " possessor of that right is bound to follow the " procedure prescribed, and no other." In this case the procedure prescribed is to proceed to execute the judgment by attachment and sale, if necessary, and not to proceed by action. If an action like this could be maintained,— if the Plaintiff could recover these Rs. 12,420 from the persons in possession of the judgment debtor's property—what answer would they have if another execution creditor were to ask to attach the same property and to sell it? Could they have the property attached in their hands and taken from them when they had paid Rs. 12,420? And how could the difference be ascertained if the Rs. 12,420 should not be the full value of the property liable to attachment? How could any other creditor get the difference between the Rs. 12,420 and the actual value of the property? He must be driven to a suit or he must take the property. If he attach the property, then it would be taken from the Defendants, after having been compelled to pay the Rs. 12,420; if he could not attach the property, then he must be driven to a suit, and must be deprived of his right to execution of the decree.

It appears to their Lordships that the proper mode of enforcing a decree is that pointed out by the Code of Civil Procedure, namely, by execution and attachment and sale, or by execution and attachment, and the appointment of a receiver under section 243 to collect the property.

Their Lordships are of opinion that the Judicial Commissioner came to a right conclusion, and they therefore will humbly recommend Her Majesty to affirm his decision, and to dismiss this Appeal, with costs.