

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pubukdhari Roy and others v. Raja Radha Pershad Singh, from the High Court of Judicature at Fort William, in Bengal; delivered June 23rd, 1881.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THE appeal to the High Court in this case was from an order of the Subordinate Judge of Shahabad made upon an application for execution of a decree, praying that an attachment and sale of the judgment debtor's property specified in the application should be had for the purpose of satisfying the decree. A question arose as to whether the Statute of Limitations was a bar to that application, and the Subordinate Judge held that the debtor's plea of limitation should be disallowed, with costs. He did not go on to say that the attachment be issued; but their Lordships treat the order as substantially an order that the debtor's plea of limitation should be disallowed, and that the application should be granted. The case was appealed to the High Court, and that Court dismissed the appeal upon the ground that the order was not an appealable order within the meaning of the 588th section of Act 10 of 1877. The section says:—"An appeal shall lie from the following orders under this code, and from no other such orders," and then a number of orders are enumerated; and amongst them are the orders specified in

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clauses J and R. Clause J is:—“Orders
“ under section 244 as to questions relating to
“ the execution of decrees of the same nature
“ with appealable orders made in the course of
“ a suit;” and one of the orders in clause R is
an order under section 485 by which property of
the Defendant sufficient to satisfy any decree
which may be passed in the suit may, under
certain circumstances, be attached in the
course of a suit, and need not, according to
the provisions of section 490, be re-attached
in execution of such decree. The question
then is whether an order for attachment
and sale in execution of a decree is an order
“ of the same nature” as an order made in
the course of a suit for attachment of the
debtor’s property. Their Lordships think that
the nature of the order in both cases is an
order for attachment of property, and that an
order for attachment of property in execution
of a decree is an order of the same nature as
an order for attachment of property in the
course of the suit. Indeed, the only appealable
order in the course of a suit at all resembling an
order for attachment of property in execution of
a decree is an order under section 485. Their
Lordships therefore are of opinion that, taking
the order under appeal as substantially an order
for attachment and sale of the property in
execution of the decree, it was an appealable order
within section 588. The learned Judges of the
High Court have not very clearly stated their
reasons, but the learned Chief Justice, Sir
Richard Garth, does state that the order in
this case was substantially, and in fact, an
order to grant an application for attach-
ment and sale; and in that remark their Lord-
ships concur. They therefore think that the
order of the High Court ought to be reversed,
so far as it says that the order is not appealable.

Their Lordships, being of that opinion, have heard the Appeal.

The grounds of appeal are frivolous. The suit was originally commenced in the court of the Judge of Ghazee-pore. The case was appealed to the High Court, and ultimately to the Queen in Council. The judgment was affirmed, and was sent back to the Judge of Ghazee-pore for the purpose of being executed; but in the meantime an order had been made by Government for changing the boundaries of the districts of Ghazee-pore and Shahabad, and by virtue thereof the lands which were the subject of the suit, and which were originally in the district of Ghazee-pore, had become lands in the district of Shahabad. The Judge of Ghazee-pore, therefore, could not execute the decree, and it was necessary for him to send the decree to the Judge of Shahabad for the purpose of being executed. The Judge of Ghazee-pore did not do it himself, but he referred it to the Subordinate Judge and directed him to send a certified copy of the judgment to the Judge of Shahabad to be executed.

It was contended that, inasmuch as the judgment which got to the Shahabad Court for the purpose of being executed was sent by the Subordinate Judge instead of by the Judge himself, the Judge of Shahabad when he got it had no power to execute it. Their Lordships think that that is not an objection which can be maintained.

Then it was urged that when the Judge of Shahabad got it, he, instead of executing it himself, referred it to the Subordinate Judge for the purpose of being executed, and that he could not legally do so; but when their Lordships look at Act 8 of 1859, section 287, they think that the Judge of Shahabad clearly had the power of referring the decree to the Subordinate Judge for the purpose of its being executed by him. The 287th section of that Act

enacts as follows:—"The copy of any decree, or
" of any order for execution, when filed in the
" Court to which it shall have been transmitted
" for the purpose of being executed as aforesaid,
" shall for such purpose have the same effect as
" a decree or order for execution made by such
" Court, and may, if the Court be the principal
" civil Court of original jurisdiction in the
" district, be executed by such Court, or any
" Court subordinate thereto to which it may
" entrust the execution of the same." It seems
clear that, under the very words of section 287,
the Judge of Shahabad had a perfect right to
entrust the execution of the decree to the
Subordinate Judge.

Their Lordships, having heard the Appeal upon
the merits, are of opinion that it ought to have
been dismissed and the decree of the First Court
affirmed. Arriving, therefore, at the same con-
clusion as the High Court did, though for different
reasons, their Lordships will humbly advise Her
Majesty to dismiss this Appeal, and to affirm
the judgment of the First Court. The Appellants
must pay the costs of the Appeal.