

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kissorymohun Roy and others v. Hursook Dass, from the High Court of Judicature at Fort William, in Bengal; delivered 1st August 1889.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The present Appellants, in a suit brought by them before the Subordinate Judge of the 24-Pergunnahs, obtained decree for a debt of Rs. 4,523 against two persons, who, in these proceedings, are called the Deys, on the 7th January 1884. During its dependence, the Appellants made application, in terms of Section 483 of the Civil Procedure Code, for attachment in security of 1,900 bales of jute, more or less, then lying in the present Respondent's premises at Chitpore, which they alleged to be the property of one of the Deys, the Defendants in the suit. On the 28th November 1883 a perwana was issued, directing the Nazir of the Court "to proceed to the spot " and make an inventory of the bales of jute " actually attached, *the same will be identified " by Hari Churn Sircar on Plaintiff's behalf.*"

The Nazir, in execution of the warrant, proceeded to the Respondent's premises on the 28th

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November, and there attached a quantity of jute which was pointed out to him by the Appellants as the property of Borodokant Dey, consisting of 848 bales which the Respondent alleged had been purchased by him from the Deys, and 74 bales over which he alleged that they had given him a lien for advances. The Respondent then preferred a claim to the goods attached under Section 278 of the Code, which was disallowed, after inquiry, by the Subordinate Judge, on the 15th April 1884.

On the 28th April 1884 the Respondent, as authorized by Section 283 of the Code, instituted the suit in which this appeal is taken before the High Court at Calcutta, in order to establish the rights which he claimed in the goods, and for damages in respect of their wrongful attachment. By decree dated the 28th December 1884, Wilson, J., declared that the Respondent was sole and absolute proprietor of the 848 bales, and had a valid and effectual lien upon the remainder for advances exceeding their value, and assessed damages at Rs. 24,584, being the market value of the jute at the time of the attachment. The Court of Appeal, on the 13th March 1886, affirmed the judgment of Wilson, J., with costs.

The decree of the Subordinate Judge dismissing the Respondent's claim was not brought under review in these proceedings before the High Court; but the effect of the judgment of the High Court has been to supersede his decree and render it altogether inconclusive. The goods in question were sold in June or July 1884 by order of the Subordinate Judge, when, owing to the intermediate fall in the market, the price obtained for them was about half of what they were worth at the date of the attachment.

The validity of the Respondent's claim to

these 922 bales of jute depends upon the authenticity of the documents of title produced and founded on by him, which has been affirmed in this action by the concurrent findings of both Courts below. In the argument addressed to their Lordships the Appellants did not impeach these findings ; but they maintained that damages were assessed on an erroneous principle, and that the Respondent was not entitled to recover more than the price which the jute realized when sold by order of the Subordinate Judge in the year 1884.

The Appellants argued that to condemn them in payment of the market value of the jute on the 28th November 1883 was, in reality, to make them responsible for delay occasioned by litigation, and that the Respondent could not recover the difference between that value and the depreciated price arising from such delay, unless he alleged and proved that they had litigated maliciously and without probable cause. That is a rule which obtains between the parties to a suit when the Defendant suffers loss through its institution and dependence. It does not apply to proceedings taken by the injured party, after the wrong is done, in order to obtain redress. But, in this case, there has been no action and no proceeding instituted by the Appellants against the Respondent Hursook Dass. The summary proceeding under Section 278 was taken by the Respondent for the purpose of getting the release of an attachment issued in a suit to which he was not a party ; and it does not appear to their Lordships that, in order to entitle him to recover full indemnity for the wrongful attachment of his goods, the Respondent is bound to allege and prove that the Appellants resisted his application maliciously, and without probable cause.

The Appellants mainly relied upon the English case of *Walker v. Olding* (1 Hurlst. and N., 621),

which was cited as an authority for the proposition that a judgment creditor is not responsible for the consequences of a sale, under a judicial order, of goods illegally taken in execution in satisfaction of his debt. "Walker v. Golding" would have been an authority of importance had the law of execution been the same in India as in England, but there is in that respect no analogy between the two systems. In England the execution of a decree for money is entrusted to the Sheriff, an officer who is bound to use his own discretion, and is directly responsible to those interested for the illegal seizure of goods which do not belong to the judgment debtor. In India warrants for attachment in security are issued on the *ex parte* application of the creditor, who is bound to specify the property which he desires to attach, and its estimated value. In the present case, by the terms of the perwana, no discretion was allowed to the officer of Court in regard to the selection of the goods which he attached; his only function was to secure under legal fence all bales of jute in the Respondent's premises which were pointed out by the Appellants. The illegal attachment of the Respondent's jute on the 28th November 1883 was thus the direct act of the Appellants, for which they became immediately responsible in law; and the litigation and delay, and consequent depreciation of the jute, being the natural and necessary consequences of their unlawful act, their Lordships are of opinion that the liability which they incurred has been rightly estimated at the value of the goods upon the day of the attachment.

Their Lordships will therefore humbly advise Her Majesty that the judgment appealed from ought to be affirmed, The Appellants must pay the costs of this appeal.

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