1923.

Present : Schneider J.

CADER *v.* SAIBU.

331—C. R. Jaffna, 15,131.

Payment by judgment-debtor to person seizing decree after assignment by judgment-creditor—Civil Procedure Code, ss. 254, 340, and 349.

Plaintiff in this case assigned his decree to substituted-plaintiff on November 4. In action No. 5,299 of the same Court, a Chetty obtained judgment against plaintiff and defendant. The Chetty seized the decree in this case in favour of the plaintiff on November 9. The defendant paid the Chetty on November 10 Rs. 65 in full satisfaction. Thereafter the substituted plaintiff issued writ against defendant to recover Rs. 123·64.

Held, that defendant was not entitled to get credit for the Rs. 65 paid as aforesaid.

"A judgment-creditor who seizes a decree in another action is to be deemed an assignee of the latter decree only for the limited purpose of execution of the decree seized for the satisfaction of the decree in his favour. He cannot be regarded as entitled to all the rights of an ordinary assignee."

"Once a writ under which a decree is seized is satisfied, it follows that the seizure is, *ipso facto*, released, and the decree which has been seized is released from the burden of the seizure and all results consequent thereon."

THE facts are set out in the judgment.

Croos Da Brera (with him *Ramachandra*), for defendant, appellant.—Under section 254 of the Code, the judgment-creditor, at whose instance a decree of Court is seized, becomes an assignee thereof. The assignment operates as from the date of seizure, and the assignee is entitled to all the privileges of a private assignment. The assignment in favour of the substituted-plaintiff may have been made prior to the seizure, but so long as it was not notified to Court, the debtor was not obliged to consider it. The payment of the debt by the defendant to the judgment-creditor in case No. 5,299 was made in ignorance of the assignment to substituted-plaintiff. Such payment must be taken to be made

in good faith, and the debtor should be discharged. A private assignment must be taken as non-existent so long as it is not notified to Court as required by section 339 of the Code. Under the Roman-Dutch law it is clear that unless the debtor has received formal intimation from the cessionary, he can safely pay to the cedent or to a subsequent cessionary who has given notice. Counsel cited *Berwick's Voet, p. 104; 3 Burge, pp. 547–541;* and *4 Halsbury's Laws of England 379.*

Cader, for substituted-plaintiff, respondent.—Section 254 merely says that a seizing creditor becomes an assignee from the date of decree, but in this case there was nothing to seize, as the debtor had by prior deed divested himself of his interest in the substituted-plaintiff's favour. Section 254 says that the assignment is good "so far as that person's interest extends." This clearly contemplates the existence of some interest in the plaintiff. It is the duty of the debtor to pay to any person legally entitled to receive payment. The substituted-plaintiff's assignment was prior in date, and he was entitled to payment in preference to the subsequent assignee by operation of law. Even the seizing-creditor was not substituted as required by section 339, and the debtor should have waited until this was done.

Croos Da Brera.—Under the Roman-Dutch law, even in the case of two private assignments, payment to the subsequent assignee without notice from the former is good, and discharges debtor. An assignee by operation of law ought not to be placed on a different footing.

February 14, 1923. SCHNEIDER J.—

An interesting and important question is raised by this appeal. It will be useful to state the facts.

On November 2, 1921, decree was entered in this action in favour of the plaintiff for Rs. 73·45, inclusive of costs.

On November 4 this decree was assigned by the plaintiff to the substituted-plaintiff, who is the respondent in this appeal by a deed duly registered.

On November 9 the decree was seized by the judgment-creditor in action No. 5,299 also of the Court of Requests of Jaffna.

That decree was against the plaintiff and the defendant in this action. In the absence of proof to the contrary, I will assume that they are both liable jointly and severally.

On November 11 the substituted-plaintiff made an application to have himself substituted in place of the plaintiff in this action. It was opposed. The opposition was upheld, but on appeal it was directed that he should be so substituted. Upon being substituted he made an application for the execution of the decree. This, too, was opposed by the defendant, who in his turn made an application that satisfaction of the decree be recorded as certified (section 349).

1923.

SCHNEIDER J.

Cader v. Saibu

The relevant facts set out in his affidavit are the following : He paid the judgment-creditor in action No. 5,299 on November 10 a sum of Rs. 65, and obtained the receipt marked D 1 in the following terms : " After the decree in case No. 15,131 of the Court of Requests of Jaffna had been seized under the writ in case No. 5,299 of the Court of Requests of Jaffna, I have received from Meera Saibo, defendant in the said case No. 15,131, the sum of Rs. 65."

The substituted-plaintiff thereafter issued writ in this action against him to recover Rs. 123·64, inclusive of the costs awarded in appeal. He claimed to be entitled to set-off against that sum, the sum of Rs. 65 paid as aforesaid and also a sum of Rs. 17 for which he had an order in his favour against the plaintiff. He brought the balance sum of Rs. 41·64 into Court, and claimed to have fully satisfied the decree. On appeal the substituted-plaintiff's counsel conceded that the defendant was entitled to credit in the sum of Rs. 17. Accordingly, the one issue between the parties was whether the defendant was entitled to set-off against the substituted-plaintiff the sum of Rs. 65 paid as aforesaid.

Mr. Croos Da Brera, on behalf of the defendant, contended that the effect of section 254 of the Civil Procedure Code was to constitute the judgment-creditor in action No. 5,299 (whom I shall hereinafter speak of as the Chetty), the assignee of the decree in this action as from the date of the seizure. He drew attention to section 340 of that Code, and contended that he, as judgment-debtor in this action, could have successfully claimed to have credit for the payment of the Rs. 65 if he had paid that sum to the plaintiff, and that, therefore, he was entitled to claim the benefit of that payment as against the substituted-plaintiff.

The view I take of section 254 is that a judgment-creditor who seizes a decree in another action is to be deemed an assignee of the latter decree only for the limited purpose of execution of the decree seized for the satisfaction of the decree in his favour. He cannot be regarded as entitled to all the rights of an ordinary assignee. Any surplus after satisfaction of his claim will not belong to him, but to the actual decree-holder. Section 254 is one of several sections dealing with matters relating to the execution of decrees grouped under chapter XXII., which is headed " Of executions." In section 254 it is expressly enacted that the judgment-creditor who seizes is " to be deemed " the assignee under assignment as of the date of the seizure, and in so far as the interest of the person against whom he is seeking execution extends. It would, therefore, appear that the plaintiff divested himself of all interest in the decree in this action by his assignment to the substituted plaintiff on November 4, and that when the Chetty seized the decree the plaintiff had no seizable or any interest whatever in it.

But Mr. Croos Da Brera argued that at the time he made the payment to the Chetty he had no notice of the assignment in favour of the substituted-plaintiff, and that he was, therefore, justified in making the payment to the Chetty as the only known assignee. The answer to that argument is that the Chetty was never an assignee of the decree, because at the date of his seizure his debtor had no interest in the decree.

A second argument against the contention is that a debtor who makes payment to a creditor who has seized a decree in favour of his judgment-debtor does so at his risk, for events may arise as in this case, in consequence of which the seizing-creditor would not be entitled to claim any interest in the decree he has seized.

There is another argument against Mr. Croos Da Brera's contention. Once a writ under which a decree is seized is satisfied, it follows that the seizure is, *ipso facto*, released, and the decree which has been seized is released from the burden of the seizure and all results consequent thereon. Accordingly, the defendant is not entitled to credit for the sum of Rs. 65, but only for the sum of Rs. 17.

Subject to that variation the order appealed from is affirmed, and the appeal dismissed, with costs.

Appeal dismissed.