(1868) 07 CAL CK 0034

Calcutta High Court

Case No: None

Anandalal Das		APPELLANT
	Vs	
Radhamohan Shaw and Others		RESPONDENT

Date of Decision: July 31, 1868

Judgement

Markby, J.
The abstract question of law, which is submitted for the opinion of the Full Bench, is as follows:

Whether a private bond fide alienation, for value, of property attached in the manner pointed out by section 240, Act VIII of 1859, is by virtue of that section null and void as to all the world or only as to the attaching-creditor, or the persons who may acquire rights under or through the attachment, or to what other limited extent?

I consider that the question proposed assumes that a first attachment had been issued and had not been formally removed, but that the judgment-creditor who had attached had received the amount of his claim; and that before the formal removal of this attachment, the property was again attached by another creditor, who brought the property to sale by auction, and that the question now to be decided arises between a purchaser under this sale, and a purchaser by private alienation from the judgment-debtor. The question which we have to consider, resolves itself into two, or rather I may say that it may be considered under two aspects.

2. First.--Whether the private sale by the judgment-debtor was made during the continuance of the attachment.

3. Secondly.--If so, whether this sale is null and void by reason of the provisions of section 240, Act VIII of 1859, as against the auction-purchaser.

4. Taking the words of sections 235 and 240 in their literal meaning, it is clear that both these questions must be answered in the affirmative. When a special and formal mode is pointed out for withdrawing an attachment, it cannot, speaking with

strictness, be said to be removed until that mode has been followed; and until it is removed, the property, strictly speaking, remains under attachment; and the private sale having taken place whilst the property was so under attachment, it is, in strictness, "null and void" under this section.

5. But it is said that we ought not to give these words this strict literal construction; that the object of the Act was only to protect the rights of the creditors who had actually attached at the time of alienation, and that it was no part of the intention that the attachment by one creditor should enure to the benefit of other creditors who had not attached; that the provisions of the Act, therefore, must be construed with reference to this intention, and when this is satisfied, transactions otherwise valid are not to be disturbed.

6. I entirely adopt the rule of construction which is contended for in support of this argument. Not only because Acts of the Legislature are, as Lord Coke said, "many times on a sudden penned and corrected by men of none or very little judgment in law," but because by the necessary and inherent imperfections of language, such a rule of construction is rendered imperative. I think it has rightly been called the rational rule of construction, and I may take it for the present as adopted by Lord Wensleydale in Grey v. Pearson (6 H.L. Ca., 106), where he says: "In construing wills, and indeed Statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument; in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further."

7. I willingly, therefore, concede that if it can be clearly ascertained in this mode that, in these provisions, the rights of the attaching-creditor were exclusively in view, then a strict literal construction of these words can no longer be contended for; and either of the above questions may be answered in the negative. The first attachment, though in form remaining, may be considered as no longer continuing within the meaning of section 240, or the words "null and void" may be read as meaning null and void as against the attaching-creditor only; and in either way we arrive at the same conclusion in favour of the defendant, that his purchase was good as against subsequent attaching-creditors.

8. But this only throws us one step further back upon the inquiry, whether the intention of the Legislature was that the attachment should be for the benefit of the attaching-creditor only, or whether it was to some extent to operate for the benefit of other creditors by completely suspending the power of the debtor to alienate his property whilst the attachment continued. If the latter were the intention of the Legislature, then the words of section 240, in their stricter and more literal meaning, only carry it out.

9. It is generally conceded, and it is laid down by the canon of interpretation, which I have now adopted, that the best key of construction to one portion of an Act of the Legislature is to be found in the other provisions of the Act itself; and I must own, with the greatest respect for those who entertain a different view, that an examination of Act VIII has led me to the conclusion that, to some extent at least, the Legislature did intend that the attachment of one creditor should enure to the benefit of the other creditors, even as against a bona fide purchaser for value. For example, if A, on Monday attaches the property of B, and B, on Tuesday, sells this same property subject to the attachment to C, A remaining unpaid, and after the sale to C, a number of other creditors, D, E, and F, come in and attach the same property, any one of the attaching-creditors may proceed to get the property sold under the execution. Then u/s 271, when the property is sold, the proceeds will be first applied in payment of the debt of A, and then divided rateably amongst the other creditors, without any regard whatever to the right of B. This is a case in which clearly the attachment of A operates most effectually in favour of other creditors. For, if the first attachment operates for the benefit of the attaching-creditor, A, only, then, subject to his rights, C would be the owner of the property, and by paying off A, would become the absolute owner, to the entire exclusion of D, B, F, &c., whereas the operation of this section is entirely otherwise.

10. I also think that sections 206 and 245, which provide that adjustment of decrees shall be made and attachments removed through the Court, point strongly in the same directions. Those provisions would be wholly unnecessary, if a private arrangement between creditors and debtors could be made, the result of which was that the property was released from attachment without the action of the Court, which would, as Mr. Woodroffe has, I think, rightly argued, come to this, that a private satisfaction of the decree would be equivalent to a removal of the attachment.

11. With regard to the last paragraph but one of section 243, I think that section means that though the arrangement for sale may be made privately, yet the money is to be brought into Court, and the Court would then withdraw the attachment on application, if it approved of the sale.

12. It may be as well, also, in considering what may have been the intention of the Legislature by these provisions, to consider the state of things to which they were intended to be applied. By far the most important application of them would be as against insolvent debtors. Solvent debtors do not very often have execution issued against them; and if they have, it makes very little difference who gets first paid. But insolvent debtors, as soon as, or just before their difficulties become public, are very prone to do one of two things; either to place their property in friendly hands, out of the reach of their creditors, or to contrive that it shall reach favoured creditors only, to the exclusion of the rest. And as Mr. Justice Bayley and myself pointed out the other day, in a case on the other side of the Court, for more than two hundred years

the English law has steadily set its face against both of these contrivances (see the observations of Lord Mansfield in Worseley v. Demattos), (1 Burr, 467). The English law has, it is true, gone much further; and in Europe, and here in Calcutta, has provided, where a man is insolvent, for an equal distribution of his property amongst all his creditors. In India, outside of the Presidency towns, there is not such general provision; that the provisions under Act VIII of 1859 relating to attachment may, I think, have not improbably been intended as an installment of the same principle, it being one which by universal consent has, wherever it has been applied, been found to be beneficial. At all events, I am by no means prepared to say that a provision which having this object in view deprives a man of the power of alienating his property which has been attached, until that attachment has been removed in a formal manner, is impolitic and unjust, and could not have been intended by the Legislature.

13. That this is the plain grammatical meaning of the provision, is conceded ; and so far from being inconsistent with, or repugnant to the other sections of the Act, I think I have shown that it is in entire accordance with them.

14. As for the absurdities which have been suggested, I cannot say that I feel much pressed by them. It has been suggested that a wealthy merchant might have all his property seized and his business stopped by a malicious creditor. My answer to this is, that the Legislature may well have considered that that is not a highly probable contingency. Another suggestion has been that a cargo of fish might be seized, and would perish before it would be sold by order of the Court. My answer is that this calamity (which would in any way be very rare) might happen under this Act, whatever construction you put upon it, unless (when I think probable) it could be avoided by a reasonable construction of other sections. I do not think Lord Wensleydale meant that the construction of an Act of the Legislature was to be controlled by such farfetched possibilities as these.

15. The only suggestion which has raised any doubt in my mind is, that possibly a satisfied attachment might accidentally remain unremoved, although all the debts were satisfied, and long after this defect in the title of a purchaser who had purchased after the attachment might be discovered and relied on. This would be an evil, and perhaps might be an absurdity. If so, that is a good reason for limiting the operation of the Act so as to avoid this absurdity, but no further. This would be easily done by holding the sale void only as against those who were creditors at the time the attachment was created, and who had issued execution before the formal removal of the attachment. That would avoid the supposed absurdity, and would, carrying out the rule relied on, be going no further.

16. Something has been said about the origin of these provisions. I think their origin is to be found neither in the Regulation law nor in the law of the old Supreme Court, nor in the law of England. It appears to me to be not improbable that in drawing up a Code of Civil Procedure, which professes to be based upon enlightened principles

of modern jurisprudence, its authors may have had recourse to a Code of Procedure which regulates the practice of Courts of law in a very large portion of the Continent of Europe. I mean that of the Code Napoleon. The provisions in this respect of the CPC in use in France, Italy, and a large portion of Germany, are in many respects similar to the provisions of the Indian Civil Procedure Code, as I read them. There are important differences, but they are rather differences of form and extent than of principle. In those countries if one creditor seizes, no other creditor can seize the same property, the maxim being the old French one that Saisie sur saisie ne vavt; but any number of creditors may come in and claim the benefit of the attachment. This is a difference, therefore, of form only. It is also an inviolable principle of law, that the first creditor can do nothing which may impede a speedy and effectual sale of the attached property, and when the sale takes place, the proceeds are distributed amongst all the creditors without reference to the order in which they claimed the benefit of the seizure. This is another difference, but again of degree rather than of principle. The process of execution by way of attachment, under Act VIII, is to my mind much more like this Saisie-execution of the Code Napoleon than the ordinary process of execution in England, or any procedure formerly known here. If any one thinks it worth while to refer to the French law, he will find it in the Co. Civ. Proc. Fr. ss. 609, 599; Euvres de Pothier ed. Buguet, Vol. II, p. 672, Vol. X, p. 216, and the Italian Law in Co. Proc. Civ. Ital., Art., 631.

17. I wish to add that I by no means consider that it follows from what I have now said that the judgment-debtor himself could impeach a sale made by him daring the continuance of attachment. On this question, as it appears to the, a totally different class of considerations would arise, namely, how far a man would be allowed to impeach the validity of his own acts; or putting the same question in another form, how far the construction of the Act would be controlled by some equitable principle.

18. Something has also been said during this argument about the proper mode of formally removing an attachment in this Court on the Original Side. All questions of practice on the Original Side are greatly embarrassed by our having adopted Act VIII of 1859, and a portion--but nobody can say how much--of the practice of the old Supreme Court. It seems to the, however, that if we have not adopted the provisions of section 245* of Act VIII of 1859 as to the mode of removing an attachment, then the practice as to removing attachments must be the same as existed in the old Supreme Court as to the removal of executions, which was I believe, by giving notice to the sheriff. This is not a matter on which we are now called upon to express a final opinion, because the question under consideration assumes that the first attachment had not been formally removed; but as the question has been mooted and may affect a great many titles, I think it right to express an opinion upon it.

19. The result of my judgment is that a private bond fide alienation by a judgment-debtor, for value, of property attached in the manner pointed out by section 235, is by virtue of section 240 null and void not only as to the

attaching-creditor, but as to all other persons who may acquire rights under or through an attachment until the original attachment has been formally removed. Possibly, also, there ought to be a further limitation to those persons who were creditors at the time the original attachment was laid on.

Peacock, C.J.

20. My learned and honourable colleague, Mr. Justice Markby, who has preceded me, has alluded to the illustrations which were introduced in the course of the argument in this case, and has described them as mere far-fetched possibilities. I will not, therefore, take as an illustration of my view any mere possibility, but will take, as an illustration of my view of section 240, the facts of this case as they actually occurred.

21. The first attachment was made under a decree obtained by Indra Chandra Johury. The property was attached on the 29th of September 1866. The second attachment was at the suit of Beni Madhab Banerjee, and was put in on the 17th of November 1866. The third attachment was at the suit of Nitai Chand Pal, and was executed on the 22nd of November 1866. This third attachment had not been put in at the time when the sale to defendant, now under consideration, was effected. The sale was completed for Rs. 15,312-8, on the 19th November 1866, before the third attachment was put in; and it was made with the consent of all the creditors who had attached the property at that time. A conveyance was executed, and the money paid by the defendant. The two decrees, under which the property had been attached, as well as a prior mortgage, were satisfied out of the proceeds of the sale. Unfortunately, the two attachments which had been put in when the sale was made, had not been withdrawn, although the decrees under which the attachments were made had been actually satisfied out of the sale proceeds.

22. The third attachment was afterwards put in on the 22nd November 1866, and the property was still under it on the 21st February 1867, when the plaintiff became the purchaser for the sum of 1,950 rupees. If the sale to the defendant had not occurred, and the sale had been made under the 1st decree, it is clear that the amount would not have been sufficient to pay off the 1st attachment, so that the second and third attachments would have been wholly unsatisfied.

23. The question then arises, what is the true and proper construction to be put upon section 240. Is such a construction to be put upon it as will have the effect of setting aside the sale to the defendants for Rs. 15,312-8, and to allow the property to be sold to the plaintiff for Rs. 1,950?

24. My learned and honourable colleague has alluded to the law of the continent, but the law of the continent is not the law of this country, nor is it any guide for the construction of Act VIII of 1859, by which the sale in this case is to be governed. We must deal with the law as it prevails here, and must look to principles, and see whether section 240 is to be so construed as to allow such an injustice to be

perpetrated.

25. Act VIII of 1859 was not intended to provide against existing evils, but its object was to "simplify the procedure of the Courts of Civil Judicature not established by Royal Charter."

26. It is pointed out in a chapter well worth studying in Domat''s Civil Law, chapter 12, page 88, Boston edition, 1850, edited by Ousting, that "it is the duty of a lawgiver, to foresee only the most natural and ordinary events, and to form his dispositions in such a manner as that, without entering into the details of the singular cases, he may establish rules common to them all, by discerning that which may deserve either exceptions or particular dispositions; and next it is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the express sense of the law, or within the consequences that may be gathered from it." The author proceeds: "It happens in two sorts of cases that it is necessary to interpret the laws. One is, when we find in a law some obscurity, ambiguity, or other defect of expression; for in this case it is necessary to interpret the law in order to discover its true meaning. And this kind of interpretation is limited to the expression, that it may be known what the law says. The other is, when it happens that the sense of a law, how clear so ever it may appear in the words, would lead us to false consequences, and to decisions that would be unjust, if the laws were indifferently applied to everything that is contained within the expression. For, in this case, the palpable injustice that would follow from this apparent sense obliges us to discover by some kind of interpretation, not what the law says, but what it means; and to judge by its meaning how far it ought to be extended, and what are the bounds that ought to be set to its sense;" and he goes on and gives a number of examples, and says, "And in order to make them the more useful for such as have least knowledge and experience, we shall set down an example so clear, that it will convince anybody, at first sight, that we ought not always to take the law in the literal sense."

27. One of the examples he gives is in para. 42 of the same chapter. "If an arbitrary law being applied to a case which it seems to include, there follows a consequence contrary to the intention of the lawgiver, the rule ought not to be extended to that case. Thus, for example, the ordinance of Moulens, which annuls indifferently all substitutions for the want of publication, without specifying the persons with respect to whom they are to be null, does not render them null with respect to the executor who is burdened with the substitution; because the executor was obliged by another rule to cause publication of it to be made, as being charged with the execution of the dispositions of the testator; and he ought not to reap any benefit by his own negligence or dishonesty."

28. Now I believe those rules are perfectly in accordance with the rules of English law. It is not necessary for me to refer to many cases. It is sufficient to mention the

well-known case as to the construction of the Statute of Elizabeth as to Bishop''s leases, and to refer to the cases of Kinderly v. Jervis (22 Beav., 1), and Eyre v. Mcdowell (9 H.L. Ca., 619), to show that the laws must receive a reasonable construction, and ought not to be applied merely according to the letter, when such a construction would work injustice. There is an old case which was a good example of the mischief which might arise from too literal a construction of a law. The Statute of the 1st of Edward the 2nd enacted that a prisoner who should break prison should be guilty of felony. But it was held, that when a prison was on fire, and the prisoner broke it in order to save his life, he was not guilty of an offence. He was within the letter but not within the reason of the law; and it was said that "he was not to be hanged because he would not remain in prison and be burnt to death."

29. Applying these principles to the present case, I propose to consider what is the true construction of section 240. That section is one of the sections in a chapter relating to the execution of decrees.

30. Section 232 enacts that "if the decree be for money, and the amount thereof is to be levied from the property of the person against whom the same may have been pronounced, the Court shall cause the property to be attached in the manner following."

31. Section 235 provides the manner in which attachment is to be made when the property consists of immovable property. It says: "Where the property shall consist of lands, houses, or other immovable property, the attachment shall be made by a written order prohibiting the defendant from alienating the property by sale, gift, or any other way, and all persons from receiving the same by purchase, gift, or otherwise."

32. But what is the object of such attachment? Not for the benefit of the creditors at large, but for the purpose of levying the money due under the particular decree. Section 235 merely ordains that the judgment-debtor is not to sell. But it does not say what is to be done if he does sell. That was reserved for section 240.

33. Section 240 says: "After any attachment shall have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order, after it shall have been duly intimated and made known in the manner aforesaid, any private alienation of the property attached, whether by sale, gift, or otherwise, during the continuance of the attachment, shall be null and void."

34. The object was to make it null and void so far as it might be necessary to secure the execution of the decree. It relates only to an alienation which would affect the creditor who obtained the attachment.

35. It is clear that notwithstanding a decree, the judgment-debtor may, before attachment, sell property liable to be attached, if he does it bond fide, and a bond fide purchaser will obtain a title under the purchase. All that this Act intended to do

was to prohibit a judgment-debtor from alienating during the continuance of an attachment by which he is ordered not to do so. Any other construction of the Act would cause great injustice. Section 242, to which we have been referred, throws some light upon the meaning of the words during the "continuance of the attachment." It says: "In all cases of attachment under the preceding sections, it shall be competent to the Court, at any time during the attachment, to direct that any part of the property so attached as shall consist of money or bank notes or a sufficient part thereof, shall be paid over to the party applying for execution of the decree: or that any part of the property so attached as may not consist of money or bank notes, so far as may be necessary for the satisfaction of the decree, shall be sold, and that the money which may be realized by such sale or a sufficient part thereof, shall be paid to such party."

36. Now suppose bank notes are seized. If the judgment is satisfied, are they to be paid over to the attaching-creditor, if the Court should not have ordered the attachment to be withdrawn. If the words are taken in their literal sense, this must be done. The words "during the attachment," in section 242, have the same meaning as the words "during the continuance of the attachment" in section 240. Again, if the attachment is to be held to be a continuing attachment after the decree has been satisfied, merely because the attachment has not been withdrawn, what is to be done if it is reversed either on review or on appeal?

37. If the Act intended that the attachment should be for the benefit not only of the decree-holder who put it in, but also for other creditors, one would expect to find in the Act what other creditors were intended. Are we to guess what others were intended? Whether all creditors, whether they have obtained decrees or not, or only those who have obtained decrees or those who having obtained decrees have caused them to be executed by attachment.

38. Suppose a decree-holder should put in an attachment and afterwards his decree should be satisfied, and he should request to have the attachment withdrawn. Suppose the debtor should, after satisfaction of the decree, sell to a bond fide purchaser, would such sale be absolutely null and void?

39. Section 271 says: "If after the claim of the person on whose application the property was attached, has been satisfied in full from the proceeds of the sale, any surplus remain, such surplus shall be distributed rateably amongst any other persons who, prior to the order for such distribution, may have taken out execution of decrees against the same defendant, and not obtained satisfaction thereof."

40. It provides for property once sold, and says that the proceeds are to be divided among persons who have taken out execution. That would not enable all persons who had obtained decrees without having taken out execution upon them to participate in the proceeds. If so, they should have no right to prevent an attaching-creditor from withdrawing his attachment upon satisfaction of his decree,

or to set aside a bond fide sale made by the debtor after satisfaction of all decrees upon which such attachments had been issued.

41. Section 245 provides: "If the amount decreed with costs and all charges and expenses which may be incurred by the attachment be paid into Court, or if satisfaction of the decree be otherwise made, an order shall be issued for the withdrawal of the attachment; and if the defendant shall desire it and shall deposit in Court a sum sufficient to cover the expense, the order shall be proclaimed or intimated in the same manner as hereinbefore prescribed for the proclamation or intimation of the attachment, and such steps shall be taken as may be necessary for staying further proceedings in execution of the decree."

42. If the construction contended for on behalf of the plaintiff be correct, I should have thought that the Legislature would in this section have protected the rights of all other decree-holders; whereas there is nothing to prevent any decree-holder from withdrawing his attachment even before satisfaction of his decree, still less to authorize him to continue the attachment after satisfaction of it. Why are we to suppose that the provisions of section 240 were intended for the benefit of all decree-holders and not for the benefit of all creditors. Yet no one goes the length of contending that it was intended for the benefit of all the creditors.

43. If the debtor in this case had not had power to settle with the attaching-or editors and to sell with their consent, he could not have raised money to satisfy the attaching-creditors, and the property must have been sold under the execution and probably have realized next to nothing. It appears to me that the construction contended for is contrary to all true principles of construction, and contrary to the principle upon which it has been decided, that the words "null and void" do not mean absolutely null and void against all the world. The sale not being null and void against all the world, against whom are we to hold that the Legislature intended to make it so. In my opinion, it was intended to make it so only as regards creditors who had obtained attachments and against every person who should obtain a title under the attaching-creditors, by purchasing under a sale in execution of the decree under which it was attached, not as regards all creditors, nor as regards decree-holders who had not obtained attachments. The sale was not rendered void by any provision of the law of Bankruptcy or Insolvency with regard to the interests of all the creditors, but merely in consequence of section 235, which was passed to give effect to attachments in execution of decrees.

44. The answer to the question put to us might, in my opinion, be that a private bond fide alienation of property during the continuance of an attachment is null and void only as respects the attaching-creditor and those who claim under or through the attachment.

Jackson, J.

45. I concur in the opinion which has been expressed by the Chief Justice, and generally also in the reasons by which he has supported that opinion. But as his judgment contains a great variety of propositions, some of which I have not had the opportunity of fully considering, I desire to state very briefly the grounds of my opinion on the point which we have to determine.

46. Generally speaking, in considering matters of construction, I prefer dealing with them as pure matters of reasoning apart from the circumstances of the particular case in which the question arises. It appears to me that, in interpreting legislative enactments, we are confined to two principles of construction: one being the literal and grammatical meaning of the passage, and the other the meaning which seems to correspond with the intention of the Legislature, such intention being collected partly from other passages of the same enactment, and partly from a consideration of the particular object which they had in view. Now it is admitted that in this case an absolutely literal construction is out of the question, and that we must ascertain from the context and from the occasion of using them how far the words are actually intended to go.

47. It seems to me, and I have always thought so, that in that portion of the Code in which section 240 occurs, i.e., section 232 to 245, the Legislature had in view merely the procedure in execution of a single decree between one plaintiff or set of co-plaintiffs, and one defendant or set of co-defendants. In order properly to consider the effect of section 240, I think we ought to read sections 235, 240, and 245 together.

48. Section 235 provides that, "where the property shall consist of land, houses, or other immovable property, the attachment shall be made by a written order, prohibiting the defendant from alienating the property by sale, gift, or in any other way, and all persons from receiving the same by purchase, gift, or otherwise."

49. Section 240 declares that, "after any attachment shall have been made by actual seizure, or by written order as aforesaid, and in case of an attachment by written order, after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, or otherwise, and any payment of the debt or debts or dividends, shares, to the defendant during the continuance of the attachment shall be null and void."

50. Section 245 no doubt indicates the only formal mode of terminating the attachment, and a prudent person who had satisfied the judgment under which the attachment had been made, and who desired to free himself entirely from such impediment to the right of dealing with his own property which might arise from the continuance of an attachment, would certainly take care to have the attachment removed in the way indicated.

51. But I apprehend that on the case arising, it would be open to the alienee to show that the attachment had virtually come to an end by a satisfaction of the decree

under which the property had been attached. In any case, however, it appears to me that the only person entitled to raise the question is the particular attaching-creditor, or some person who has acquired rights under the attachment in force at the time of the alienation which was challenged.

52. One question which was suggested was, whether with advertence to section 271, a creditor who had taken out execution while the attachment continued, had any such interest as to entitle him to insist that the attachment could not be withdrawn without satisfaction of his decree. But it seems to me clear that section 271 only applies to cases when the Fund arising from the sale of the attached property is actually in Court. In cases u/s 243, the Court will, no doubt, take care not to sanction an arrangement of the kind there mentioned, unless provision is made for payment of all the parties holding attachments on the property. In the present case, I understand that the attachment under which the plaintiff claims took place after the sale to the defendant had been completed.

53. This is shortly the view which I have taken of the section under consideration. I am of opinion that an alienation made during attachment is not void as against all the world, but only as against the attaching-creditor and those who have acquired rights under his attachment.

Macpherson, J.

54. I concur in the answer which the Chief Justice proposes to give to the question put to us, and also generally in the reasons which he has given in support of it. I consider that the answer is given merely to the abstract question, without reference to the facts of this particular case.

Mitter, J.

55. I concur with the opinion of the Chief Justice in holding that a private bond fide alienation of the property attached in execution of a decree is null and void as against the attaching-creditor only, and those who claim through or by him, but not as against any other person.

56. It appears to me that in construing the provisions of the 240th section of the Code of Civil Procedure, there is no other alternative than to hold either that the alienation is null and void as against the whole world, including the judgment-debtor himself, or that it is null and void as against the attaching-creditor only and those claiming by or through him.

57. If the words of the section in question are to be understood in their absolute signification, or in other words if it is once held that the alienation is null and void as against the whole world, it must be necessarily null and void as against the judgment-debtor also, who is one of the world. It has been said that although upon a proper construction of section 240 it must be held that the alienation is null and void as against the judgment-debtor also, a Court of Equity would not permit the

judgment-debtor to repudiate his own deliberate act to the prejudice of a bond fide purchaser for value. I am of opinion that this argument is entitled to no weight. No one can be estopped by an act which the Legislature has declared to be null and void, in his favour, and it is beyond all controversy that a Court of Equity is bound to follow the declared intentions of the Legislature just as much as any other Court of Justice. It is clear, therefore, that those who would put an absolute construction upon the words of section 240 are bound for the mere sake of logical consistency to go the entire length of holding that the alienation is null and void as against the judgment-debtor also.

58. But if it is once conceded, as I think it has been virtually conceded, in the argument before us, that the alienation is not null and void as against the judgment-debtor, the position that it is null and void as against the whole world must necessarily fall to the ground; and all attempts to extend the operation of the section in question beyond the attaching-creditor and those who claim through or by him, must also fall with it. For it is clear that if we once abandon the position above referred to, there must be a line of demarcation somewhere beyond which it would be obviously improper to go, and I may here observe that the onus of pointing out the true situation of this line, lies upon those who would extend it beyond the attaching-creditor and persons claiming by or through him. Be this as it may, it is perfectly clear that if we exclude the judgment-debtor, we must also exclude those persons who derive their title through him, and as to strangers, it is sufficient to say, that they can have no possible right in justice or equity to take an advantage of an attachment which was neither made at their instance nor intended for their benefit. It has been said that when a property is attached in execution of a decree, the attachment is made not merely for the benefit of the attaching-creditor, but for that of all the creditors generally. I am of opinion that the argument is not sound. There is nothing whatever in the Procedure Code to warrant such a contention, nor do I find anything in justice or equity by which it can be supported. A judgment-creditor is entitled only to seize the right, title, and interest of his debtors, but if the alienation in question is a valid, and binding alienation so far as the debtor himself is concerned, there is nothing left for his creditors to seize for the satisfaction of their decrees. Again if we extend the operation of the section under our consideration to the creditors generally, are we to take in all the creditors whether existing at the time of the attachment or not; and, secondly, if we confine ourselves to the existing creditors only, are we to take in all the existing creditors whether they may have obtained decrees or otherwise? These questions must be satisfactorily answered before we can accept the proposed interpretation, and so far as I can judge from the provisions of the Code, I do not see the slightest reason for holding that all those creditors are entitled, indiscriminately, to claim the benefit of the attachment in question.

59. In conclusion, I wish to make a few observations with reference to an argument that has been attempted to be drawn before us from the provisions of section 271.

That section, it is to be observed, comes into operation when the property attached has already been sold, and when there is a surplus left in the hands of the Court after the demand of the attaching-creditor is satisfied in full. The persons among whom this surplus is directed to be distributed, are allowed to participate in it, not because of the previous attachment with which they had nothing to do, but because of a particular contingency which has brought into the hands of the Court a certain sum of money which the Court has been authorized to apply for their benefit. The efficacy of the attachment is exhausted for the benefit of the attaching-creditor himself, and if no surplus is left after the full satisfaction of his decree, the other creditors must be left to execute their decrees as best they can. There again, it is to be observed, that the surplus sale proceeds are to be distributed among those creditors only who "may have taken out execution of their decrees," prior to the date when the order for the distribution is made. Now I am at a loss to understand by what means we are to discover who these creditors are, when no sale has actually taken place. In the present case there has been no sale at the instance of the creditor who first attached the property in dispute, and consequently there has been neither any surplus sale proceeds nor any order for the distribution of such proceeds. How then is the appellant to be permitted to say that the creditor in execution of whose decree he has purchased the property in question, was one of the creditors referred to in section 271; or, in other words, that he was one of the creditors "who may have taken out execution of their decrees" prior to the order for distribution contemplated by that section. But be this as it may, it is abundantly clear that the creditors referred to in section 271 could not compel the attaching-creditor to cause the sale of the property attached by him, and if they could not compel him to bring the property to sale, I do not see any reason why they should be permitted to claim the benefit of his attachment, when he himself has waived it.

Order for withdrawal of attachment after satisfaction of the decree.	Sec. 245:--If the amount decreed with costs and all charges and expenses which may be incurred by the attachment be paid into Court, or if satisfaction of the decree be otherwise made, an order shall be issued for the withdrawal of the attachment; and if the defendant shall desire it and shall deposit in Court a sum sufficient to covet the expense, the order shall be proclaimed or intimated in the same manner as hereinbefore prescribed for the proclamation or intimation of the attachment, and such steps shall be taken as may be necessary for staying further proceedings in execution of the decree.