

(1889) 01 CAL CK 0002
In the Calcutta High Court

Kristo Ramani Dassee

APPELLANT

Vs

Kedar Nath Chakravarti and Others

RESPONDENT

Date of Decision : 16-01-1889

Acts Referred:

Citation : (1889) ILR (Cal) 620

Hon'ble Judges : Pigot, J;Beverley, J

Bench : Division Bench

Judgement

Pigot and Beverley, JJ.—The question raised is shortly this: Whether or not the decree obtained by the respondents against the assignor in a suit which was pending at the date of the assignment, and which had ripened into a decree before the assigned decree was fully executed, can be set-off against the unexecuted portion of the assigned decree. The question for decision depends upon the construction of three sections of the Civil Procedure Code; Sections 246, 243 and 233. By Section 246 a set-off of one decree as against another is allowed. By explanation 2 of that section, it is allowed "where either party is an assignee of one of the decrees, and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself." It was for some time a subject of controversy in this Court, whether in the case of decrees, both of which were in existence but not yet set-off one against the other, upon the assignment of one of them, the right to set-off still subsisted as against the assignee; and after some controversy that question was finally decided in favour of the right to set-off. The case now before us opens a further question, inasmuch as at the date of the assignment of the decree now held by the appellant, the decree held by the respondents had not been made, although their suit had been filed. Section 243 provides that, "if a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution of the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided. In Section 233, it is enacted that "every transferee of a decree shall hold the same subject to the equities (if any) which

the judgment-debtor might have enforced against the original decree-holder." When the appellant took an assignment of this decree, she must have known perfectly well (for it is admitted that she had full notice) of the existence of the suit against herself and her assignor, her co-sharer in the putni.

2. A right to set-off" the amount of one decree against another was repeatedly referred to, as an equity affecting the latter decree, in the decisions of this Court prior to the Code of 1877, which for the first time enacted Section 233, In whatever mode that equitable right could be made to operate as against the holder of the decree, we think it must be allowed to operate against his assignee with notice of the existence of the pending suit. It is clear that, apart from the assignment, the right of set-off as to the unexecuted part of the first decree would exist in the present case u/s 246 against the assignor; and for the reason just stated it must equally exist against the assignee.

3. We therefore dismiss both appeals with costs. We think that we ought not to be illiberal in assessing the costs in this case, which is an exceedingly oppressive attempt on the part of the appellant; and for that reason, and the importance of the matter, we allow five gold mohurs as the hearing fee in each appeal.