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would take if she at that time were to die. This is a conclusion which, to my mind, is so desirable, and it seems to me so consistent with the general principles of the Hindu law, and with the state of Hindu society, that I should not be inclined to come to any other conclusion unless necessity for it were very strongly made out. That being so, I think the decision of the Court below upon this main part of the case was quite correct, and that the appeal of the plaintiffs on this point should be dismissed.

Appeal dismissed.

Before Mr. Justice Morris and Mr. Justice Prinsep.

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BEERCHUNDER MANIKYA (DECREE-HOLDER) *v.* MAYMANA BIBEE AND OTHERS (JUDGMENT-DEBTORS).*

Transfer of Decree—Jurisdiction of Court executing such Decree—Code of Civil Procedure (Act X of 1877), *s.* 239—*Beng. Act VIII of* 1869, *s.* 66.

Where a Court in one district transfers a decree for execution to a Court situate in another district, it is beyond the jurisdiction of the Court executing the decree to question the correctness or propriety of the order under which the decree was sent to such Court for execution.

Where, in the opinion of the Court, sufficient cause has been shewn against the execution of a decree transferred for execution, the Court executing the decree should follow the procedure prescribed by s. 239 of the Code of Civil Procedure.

The *Advocate-General* (the Hon. *G. C. Paul*) for the appellant.

The respondent was not represented.

THE facts of this case sufficiently appear from the judgment of the Court (MORRIS and PRINSEP, JJ.), which was delivered by

MORRIS, J.—In this case the decree was transferred for execution from the Court of the Munsif of Ramroygram, Zilla Tippera, to the Court of the Munsif of Begumgunge in Zilla Noakhally. The decree-holder applied to the Mun-

* Appeal from Order, No. 243 of 1879, against the order of J. R. Hallet Esq., Judge of Noakhally, dated the 10th September 1879, reversing an order of Baboo Akhoy Coomar Bose, Munsif of Begumgunge, dated the 5th July 1879.

sif for execution by sale of the immoveable property of the judgment-debtor. The Munsif allowed the application. On appeal the Judge dismissed it, on the ground that, as the provisions of s. 65 of the Rent Law were applicable to the case, the decree-holder ought first to have shewn that he was unable to obtain satisfaction by execution against the person or immoveable property of the debtor.

This, we observe, is the condition precedent which the law enjoins "within the district in which the suit is instituted" before a judgment-creditor can take out execution against the immoveable property of his debtor. But in the present instance the application for execution against the immoveable property of the debtor was not made within the district in which the suit was instituted. It was made before the Munsif of Begumgunge, who should have presumed that the decree would not have been transferred to his Court for execution if satisfaction of the judgment could still be obtained within the jurisdiction of the Munsif of Ramroygram against the person and immoveable property of the debtor. Coming, as the application did, not to the Court within the district in which the suit was instituted, but to another Court within another district, it was no part of the duty of the latter Court to apply to it the provisions of s. 65. Moreover, if the Munsif of Begumgunge had gone, as the Judge considers that he ought to have gone, behind the order of the Court which sent the decree for execution, he would have acted *ultra vires*, for clearly he had no jurisdiction to determine, as by deciding under s. 65, he would necessarily have determined the correctness and propriety of the order under which the decree was sent to him for execution. If the Munsif of Begumgunge thought that there was any force in the objection of the debtor under s. 65, and that sufficient cause was shewn for so doing, he should have followed the course prescribed in s. 239 of the Civil Procedure Code, and stayed the execution of the decree for a reasonable time, to enable the debtor to apply to the Court of the Munsif of Ramroygram. But the judgment-debtor's pleader, when challenged, was unable to indicate that there were any other means of satisfying the decree.

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We, therefore, set aside the order of the Judge, and restore that of the Munsif, and direct that execution do follow in accordance with the said order.

Appeal allowed.

Before Mr. Justice White and Mr. Justice Maclean.

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BISSONATH DINDA (OBJECTOR) v. DOYARAM JANA (PETITIONER).*

Will—Attestation of Will—Attesting Witness must sign after Testator—Indian Succession Act (X of 1865), s. 50.

The signatures of the two or more attesting witnesses to a will required by s. 50 of the Indian Succession Act (X of 1865), *must be attached to the* will after, and not before, the testator's signing or affixing his mark to it.

Quære.—Whether a will can be properly attested by a marksman?

Baboo *Bhowany Churn Dutt* for the appellant.

Mr. *H. E. Mendes* for the respondent.

THE facts of this case appear sufficiently from the judgment, which was delivered by

WHITE, J. (MACLEAN, J., concurring).—This is an appeal against an order of the Judge of Midnapore, granting letters of administration with the will annexed to Doyaram Jana. The will purports to be the will of one Soonder Jana, who died on the 29th of May 1878. It is dated and alleged to have been executed on the day previous to his death.

The grant was opposed by the present objector, who is the appellant before us.

Evidence has been given of the execution of the will by six witnesses, of whom five were attesting witnesses to, and one was the writer of, the will.

The objector, on the other hand, produced five witnesses; but their evidence, of course, is of a negative character.

The Judge considered that there was ample direct evidence of the execution of the will, and that the witnesses for the applicant were fairly trustworthy.

* Appeal from Original Decree, No. 51 of 1879, against the order of W. Cornell, Esq., Officiating Judge of Midnapore, dated the 11th December 1878.