

Before Mr. Justice Morris and Mr. Justice Tottenham.

1881
March 28.

FAKURUDDEEN MAHOMED ASSAN (JUDGMENT-DEBTOR) v. THE
OFFICIAL TRUSTEE OF BENGAL (DECREE-HOLDER).*

*Execution of Decree—Merger—Foreign Judgment—Act X of 1877,
ss. 12 and 14.*

The judgment of a foreign Court, obtained on a decree of a Court in British India, is no bar to the execution of the original decree.

THIS was an appeal from an order passed by the Judge of Pubna, allowing execution to issue under a decree obtained by the late N. P. Pogose, against Azeemuddeen Chowdhry, in the Court of the District Judge of Furrirdpore. In 1880, the decree-holder brought a suit on this decree in the French Court at Chandernagore, where the defendant was then residing, and obtained a judgment, allowing the claim, on the 21st of April 1880.

In September 1880, the decree-holder applied to the Court in Furrirdpore, which passed the decree, praying that it should be sent to the District Court of Pubna for execution. This was done, and the decree-holder then made an application in the latter Court to have the decree executed. The judgment-debtor opposed the application, which was granted by the District Judge.

The judgment-debtor appealed.

Bahoo *Kissory Lall Sircar* for the appellant.—The decree of the French Court has extinguished the previous decree of the Furrirdpore Court. All the decree-holder can do now is to bring a fresh suit on the French decree. How can the Pubna Court know whether the French decree is satisfied? The lower Court relies on *Saroda Prosaud Mullick v. Luchmeeput Sing Doogur* (1); but that case does not apply now, for s. 243 of Act VIII of 1859, on which the Privy Council relied, has

* Appeal from order, No. 57 of 1881, against the order of C. D. C. Winter, Esq., Officiating Judge of Pubna, dated the 29th January 1881.

(1) 14 Moore's I. A., 529; S. C., 10 B. L. R., 214.

no corresponding section in the present Civil Procedure Code. See also Story's Conflict of Laws, pp. 498-9, and s. 14 of the new Civil Procedure Code.

Mr. *Jackson* for the respondent.—It is impossible that a decree of a Court in British India, which is here of a higher nature than the French decree, could merge in the latter. *Smith v. Nicholls* (1) and *The Bank of Australasia v. Harding* (2) are clear to show, that a foreign judgment does not merely not merge a decree, but does not merge even the original cause of action. See also *Godard v. Gray* (3). If by s. 12 of the Code of Civil Procedure the pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action, why should the foreign decree be a bar to the execution of the decree of the British Court?

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Cur. ad. vult.

The judgment of the Court (*MORRIS and TOTTENHAM, JJ.*) was delivered by

MORRIS, J.—We agree in the view of the law that has been laid down by the District Judge of Pubna, and consider that the Pubna Court can, upon the certificate that has been sent to it, execute the decree of the Furrirdpore Court. The circumstance that the judgment-creditor, in order to secure property of the judgment-debtor, which was in a foreign territory, *viz.*, Chandernagore, has obtained a decree in the Chandernagore Court on the basis of the decree of the Furrirdpore Court, does not, in our opinion, constitute a bar to the execution of the latter decree. The foreign Court does not stand in a higher position than the British Court, so that a decree of the latter should be merged in that of the former. According to the explanation given in s. 12 of the Procedure Code, "the pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action." It seems to follow, therefore, as a necessary consequence, that the existence of a decree in a foreign Court is no bar to the

(1) 5 Bing. N. C., 208. (2) 19 L. C. P., 345. (3) L. R., 6 Q. B., 139.

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execution of a decree of a Court in British India, even though the cause of action in both suits be the same.

Nor does it follow, as has been contended, that such concurrent decrees work injustice in the matter of their execution to the judgment-debtor, for any payment made in satisfaction of the decree of the Chandernagore Court, can, under the procedure prescribed in s. 258 of the Civil Procedure Code, be at once certified to the Pubna Court, and the amount placed to the credit of the judgment-debtor. In the event of execution of the two decrees being taken out simultaneously, it would be open to the judgment-debtor to bring this circumstance to the notice of the Court, and the Court would, doubtless, exercise its discretion in the manner indicated by the Privy Council in the case of *Saroda Prosaud Mullich v. Luchmeeput Sing Doogur* (1). But no hardship of this kind exists here. It is not suggested that execution has issued and property of the judgment-debtor is about to be sold by the Chandernagore Court. Even if this was the case, the judgment-debtor could, as already mentioned, secure himself from loss by certifying to the Pubna Court the payment of the sale-proceeds to the judgment-creditor. We, therefore, dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Morris and Mr. Justice Tottenham.

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 April 2.

IN THE MATTER OF THE PETITION OF JUGGODISHARI DABI.*

*Executors—Administration-bond—Indian Succession Act (X of 1865),
 s. 256—Probate.*

Executors, as well as administrators, are liable, under s. 256 of the Succession Act, to give a bond to the Judge of the District Court for the due collection, getting in, and administering the estate of the deceased.

IN this case, one Juggodishari Dabi, the universal legatee and executor under the will of one Doyamoyi Dabi, applied to the

* Rule No. 235 of 1881, against the order of J. Tweedie, Esq., Officiating Judge of Itajshahye, dated the 20th January 1881.

(1) 14 Moore's I. A., 529; S. C., 10 B. L. R., 214.