

*Before Mr. Justice Wilson.*

S. M. KADUMBINEE DOSSEE *v.* S. M. KOYLASHKAMINEE  
DOSSEE.

1881  
March 21.

*Execution of Decree — Arrest—Purdahnashin Lady — Entering Zenana—  
Civil Procedure Code (Act X of 1877), ss. 271, 336, 640.*

It is not necessary that a special order of Court should be made, empowering an officer authorized to arrest a purdahnashin lady to enter the zenana of the house in which she resides. Under s. 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zenana, in order to effect the arrest (1).

In this case the plaintiff's suit had been dismissed with costs, and a writ of attachment had been issued against her. Attempts had been made to arrest the plaintiff, who was a purdanashin lady; but she had always escaped arrest by secreting herself in the zenana of her house. The Sheriff's officer refused to execute the writ in the zenana without a special order from the Court.

A rule was then obtained, calling upon the Sheriff to show cause why he should not execute the writ by entering into the zenana of the plaintiff's house.

Mr. C. C. Dutt in support of the rule.

Mr. Jackson showed cause.—Rule 212 in Mr. Belchambers's book provides "that no Sheriff or officer of the Sheriff, or any other person executing the process of the Court in any civil cause whatsoever, before or after decree, shall enter into the zenana or private apartments allotted to the women of any Hindu or Mussulman, except affidavit be made proving to the satisfaction of a Judge of the Court that the effects seizable by such process are secreted in such zenana or private apartments, or for other special cause which, in the discretion of the Judge, may make it necessary to the due execution of the laws and the attainment of justice, and unless such Judge

(1) As to arrest of purdahnashin ladies, see *Maharani of Burdwan v. S. M. Barada Sundari Debi*, 1 B. L. R., Calo., 583. F. B., 31: *Raj Chunder Roy v. Shama Soondari Debi*, I. L. R., 4

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shall make an order in writing for that purpose." So that there must be a special reason for entering the zenana. [WILSON, J. —The rule seems only to contemplate execution by seizure of property where it is concealed in the zenana. If it were carried out in cases where it is sought to execute the decree by arrest, no female party, to a suit could ever be arrested.] The words are distinct "no Sheriff shall enter." It has always been the custom to obtain an order of the Court.

WILSON, J. —I cannot make an order authorizing the Sheriff to enter the zenana, because that involves entering the house, and I cannot order him to break into the house. The only order that I can make is, that if the Sheriff can enter the house, he may break into the zenana.

Section 640 of the Civil Procedure Code makes it clear, if it were not so otherwise, that purdanashin women are as much liable to execution of civil process as any other persons. Section 271 relates to the seizure of property in zenanas, and does not apply to this case. Section 336 is that which deals with the case where it is necessary to enter a zenana to effect an arrest. It first states the circumstances under which an officer authorized to make an arrest may enter a house, and then deals with the case of entering any portion of the house. It provides that, "when the officer authorized to make the arrest has duly gained access to any dwellinghouse, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found." If that stood alone, it would authorize the officer, when he has once entered the house, to enter any room. But the section goes on, "provided that if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who, according to the customs of the country, does not appear in public, the officer shall give notice to her that she is at liberty to withdraw; and after allowing a reasonable time for her to withdraw, and giving her every facility for withdrawing, he may enter such room for the purpose of making the arrest." The only qualification, therefore, of the general right of a judgment-creditor to arrest his judgment-debtor is, that if the room be in the occupation of a purdanashin lady not the judgment-debtor,

the officer making the arrest is to give her time to withdraw. If she is the judgment-debtor, he is bound to go in and arrest her.

Rule No. 212 in Mr. Belchambers's book is, so far as it is inconsistent with, superseded by the Code.

No order is necessary in this case to authorize the Sheriff to enter the zenana. The order I make is, that if and when the Sheriff's officer can enter the house, he is to execute the writ in the zenana. I make the order not because it is necessary, but because the Sheriff thinks that he is bound to have the order of the Court for his protection.

Attorney for the defendant: Baboo *N. G. Newgee*.

Attorneys for the Sheriff: Messrs. *Roberts and Morgan*.

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### APPELLATE CIVIL.

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*Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Pontifex, and Mr. Justice Morris.*

IN THE MATTER OF THE MAHARAJAH OF DURBHUNGAH & OTHERS.

*Stamp Act (I of 1879), s. 3, cls. 9, 11, 19—Deed of Family Arrangement.*

By a deed of family arrangement, one brother conveyed a parganna and the sum of two and-a-half lacs of rupees to a younger brother, on condition that the latter should release certain family property on which he had claims.

*Held*, that the deed was neither a conveyance or a settlement, nor an instrument of partition, within the meaning of Act I of 1879.

THIS was a reference made by the Board of Revenue to the High Court, under s. 46 of Act I of 1879, asking for an expression of opinion as to the amount of stamp-duty payable on a certain deed executed by the Maharajah of Durbhungah and his brother on the 20th August 1880. The deed, amongst other matters, recited, that the Maharajah had succeeded to, and was in possession of, the Raj and all property, moveable and immovable, which had been possessed by his father, subject to a charge for the maintenance of the junior members of the family; that disputes had arisen between the Maharajah and

\* Reference No. 1218 B, by A. Forbes, Esq., Under-Secretary to the Board of Revenue, dated 20th October 1880, under s. 46 of Act I of 1879.

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