public sale of the land is objectionable, and that satisfaction of the decree may be had, within a reasonable period, by a temporary alienation or management of the land. There is an important difference between the language used in s. 326 and the language used in preceding sections, which latter is imperative. It appears to me that the words in s. 326, "Court may authorize," are not imperative, but leave a discretion to the Civil Court. If then the Court has a discretion, that discretion can only properly be exercised upon materials placed before it, and I think that it is open to the decree-holder to place those materials in the shape of evidence before the Civil Court, and to satisfy the Court, as well by evidence as by argument, that the proposal of the Collector is not feasible or practicable. In this view, I would answer both the questions referred to the Full Bench in the affirmative.

PRIVY COUNCIL.

NILMONI SINGH DEO (DECREE-HOLDER) *v.* TARANATH MUKERJEE, (JUDGMENT-DEBTOR.)

[On appeal from the High Court at Fort William in Bengal.]

P. C.* 1882. *May* 18.

Superintendence of the High Court—24 *and* 25 *Vic.*, *c.* 104, *s.* 15—*Execution of decrees for rent*—*Act X of* 1859, *ss.* 23, 77 and 160—*Civil Procedure Code* (*Act VIII of* 1859) *ss.* 284, 294—(*Act X of* 1877); *ss.* 223, 228.

Whether a decree for rent, under Act X of 1859, made in one district, can be transferred to another for execution, is a question which the High Court can decide in the exercise of its "superintendence over all Courts subject to its appellate jurisdiction," under 24 and 25 Vic., c. 104, s. 15. Decrees for rent made by the Collector under s. 23 of Act X of 1859 can be executed by a Civil Court to which they may be transferred under the sections of the Code of Civil Procedure relating to "the execution of a decree out of the jurisdiction of the Court by which it was passed."

Appeal from an order of the High Court, (7th July 1880), made in exercise of its power of superintendence over all Courts subject to its appellate jurisdiction under 24 and 25 Vic., c. 104, s. 15. This stayed proceedings upon an order made by the Deputy

Present: SIR B. PEACOCK, SIR R. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

1882

NILMONI SINGH DEO v. TARANATH MUKERJEE.

Commissioner of Manbhum on 11th March 1872 as Collector of the District, transferring a decree for rent made in that district to another for execution; it also cancelled a similar order dated 29th May 1879.

The respondent held for some years a patni in the district of Manbhum under a grant made in 1861 by the appellant Rajah Nilmoni Singh; and during his tenure two decrees for rent—one in 1863 and another in 1864—were made against him under Act X of 1859, s. 23, in favor of the Rajah. Afterwards the respondent having ceased to hold the patni in that district, in which also unsuccessful attemp ts had been made to execute the above decrees, application was made by the decree-holder for a transfer of them to another district. On this the Deputy Commissioner of Manbhum as Collector of the district, on the 11th March 1872, made the earlier of the two orders, in regard to which the question on this appeal arose. This order referring to the application made for execution of the decrees for rent in the district of Nuddea, in which district it was stated that the judgment-debtor then resided and had property, recorded that the Deputy Commissioner found nothing in Act X of 1859 to prevent such a transfer, and directed that a copy of the proceedings should be sent to the Judge of Zillah Nuddea with a view to the amount of the decrees being realized.

The decree-holder not having obtained satisfaction in Nuddea again applied to the Deputy Commissioner for a transfer of his rent decrees under s. 223 of Act X of 1877 in May 1879. He applied for execution of them in twelve other districts which he named, undertaking that execution should be issued in not more than one at a time. The second of the two orders was thereupon made on the 27th May 1879, and copies of the rent-decrees, with certificates of their non-satisfaction, were sent to the different districts.

The respondent, after attempting in vain to obtain the withdrawal of the above orders, petitioned the High Court to cancel them on the ground that they had been made by the Deputy Commissioner of Manbhum in excess of his jurisdiction as Collector. On the 7th June 1880 a Divisional Bench (MITTER

and MACLEAN, JJ.) stayed proceedings on the order of 1872, and cancelled that of 1879, giving judgment as follows :—

"If the orders complained of are passed without jurisdiction, we think we have the power to interfere under section 15 of the Act of Parliament constituting this Court (See *In the matter of the petition of Gobind Koomar Chowdhry* (1).

"We are also of opinion that a Revenue Court under Act X of 1859 has no power to transfer a decree of its own to be executed by another Court within the jurisdiction of the latter. Such power cannot exist without an express provision of the law granting it. It is clear, therefore, that both the orders complained of are such as the Deputy Commissioner of Manbhum had no authority to pass under Act X of 1859, or any other law applicable to rent suits in that district.

"But one of the orders was passed so far back as the 11th March 1872, and we understand that sales and other proceedings have been held and completed under it without any objection on the part of the applicant. Under these circumstances, we do not think it right, in the exercise of our extraordinary power under s. 15 of the Statute referred to above, to quash it now.

"The other order complained of is comparatively of a recent date, *viz.*, the 27th May 1879, and from the time the petitioner came to know of it he has been diligently endeavouring to have it set aside. Besides, if proceedings be allowed to proceed in accordance with it, it may unnecessarily involve the parties to this suit (and possibly also third parties) in profitless litigation. Under these circumstances, we think it right to exercise our extraordinary jurisdiction in respect of this order. We accordingly set it aside, and direct the Deputy Commissioner to recall the certificates of non-satisfaction from the District Courts to which they have been sent, informing them at the same time that the order under which they were sent has been reversed.

"We are informed by the parties that proceedings are still pending in the District Court of Nuddea under the first-mentioned order. Although we decline to quash it formally on the grounds mentioned above, we have yet expressed our opinion that it was

(1) B. L. R. Sup. Vol., 714: S. C., 7 W. R., 520.

1882

NILMONI SINGH DEO v. TARANATH MUKERJEE.

also *ultra vires*. We think, therefore, that the District Court of Nuddea should be informed that it should not proceed further in the matter, and return the record back to the Court of the Deputy Commissioner of Manbhum."

On this appeal—

Mr. *R. V. Doyne* appeared for the appellant.

Mr. *J. F. Leith, Q.C.*, Mr. *T. H. Cowie, Q.C.*, and Mr. *C. W. Arathoon* for the respondent.

For the appellant it was argued that, assuming this question to fall within the High Court's jurisdiction under s. 15 of 24 and 25 Vic., c. 104, it had been wrongly held that the Collector had acted without legal authority in transferring the rent-decrees for execution. On a review of the past state of the law on this point, it was contended that so long as suits for arrears of rent were brought (Regulation V of 1831) before the ordinary Court as civil suits, the law relating to the execution of rent-decrees, as well as that relating to other decrees, was given by Act XXXIII of 1852, until its repeal when superseded by the provisions of the Code of Civil Procedure, by Act X of 1861, the repealing Act. Originally a rent-decree might have been treated like another decree, and the Deputy Commissioner's order of March 1872 correctly stated that there was nothing in Act X of 1859 to alter the law in this respect.

The latter enactment in s. 23 providing that all suits for rent should be cognizable by the Collector, did not alter the law relating to the execution of decrees out of the jurisdiction of the Courts by which they were passed. The Code of Civil Procedure, as enacted in Act VIII of 1859, was extended to Manbhum, by notification under s. 385, in June of that year; and the contention was that the procedure provided in ss. 284—296 for such execution superseded the former law. The High Court had taken for granted that these sections were inapplicable, and this was the error in the judgment under appeal. If, however, that Court had correctly supposed that the provisions of the Code on this point were inapplicable, then the previously existing law should be held to prevail. The latter view was, however, not the correct one, which, in effect, was that the sections of the Code had come

into force with reference to the execution of rent-decrees out of the jurisdiction of the Collectors making them.

For the respondent it was argued that the judgment of the High Court was correct, there being neither express language conferring the power to transfer rent-decrees from district to district for execution, nor any intention, apparent upon the construction of Acts VIII of 1859 and X of 1859, to confer this power. Rent suits had been made cognizable by the Collector by Act X after Act VIII had become law; so that Act VIII would not, of its own force, apply to the proceedings of Courts afterwards established; nor did Act X refer generally to the procedure of Act VIII. On the contrary it contained special provisions on the subject of procedure, thereby furnishing a presumption against the intention to supplement its sections by any implied reference to s. 284 *et seq.* of Act VIII, and showing what appeared in several parts of Act X (to which reference in detail was made) *viz.*, that rent suits were not treated as "civil" suits.

Mr. *R. V. Doyne* was not called upon to reply.

Their Lordships' judgment was delivered by

SIR A. HOBHOUSE.—The question presented to their Lordships in this appeal is whether the Deputy Commissioner of Manbhum, who has made decrees in rent suits under the Bengal Rent Act No. X of 1859, can transfer those decrees for execution into another district. That officer possesses the jurisdiction conferred on Collectors of Land Revenue, and having made decrees in exercise of such jurisdiction, has further proceeded to make two orders transferring two decrees for execution. The High Court in the exercise of their power of revision, have substantially quashed his orders; in point of form, they have quashed one of the orders; and they have stayed proceedings on another. It is hardly necessary to enter into the details of the litigation. The High Court have decided that the Deputy Commissioner, as Judge of the Rent Court of Manbhum, had no authority to pass the orders under Act X of 1859, or any other law applicable to rent suits in that district.

A question was raised with respect to the jurisdiction of the High Court to entertain this question in revision at all. Their Lordships do not think it necessary to say anything upon that

1882

NILMONI SINGH DEO v. TARANATH MUKERJEE.

point, except that they entirely agree with the view taken by the High Court of their own jurisdiction.

The other question depends upon the construction of Act X of 1859. That Act was passed for the purpose, among other things, of transferring suits for arrears of rent to the jurisdiction of the Collectors of Land Revenue; and it provided by s. 23, paragraphs 4 and 7, that all such suits "shall be cognisable by the Collectors of Land Revenue, and shall be instituted and tried under the provisions of that Act, and, except in the way of appeal, as provided in this Act, shall not be cognisable in any other Court, or by any other officer, or in any other manner."

It is not contended on behalf of the appellant that Act X of 1859 in any express way gave to the Collector the power of transfer which has been exercised. Neither is it contended for the respondent, that the words which have been read would, without more, prevent the provisions of Act VIII of the same year from applying to the execution of a Collector's decrees beyond the jurisdiction of his Court. The contention of the respondent is, that there is something in the language of Act X of 1859 which excludes this power from the jurisdiction of the Collector sitting as the Judge of the Rent Court established by that Act. For that purpose the respondent's counsel refer to a number of sections which may be illustrated by a single one. Section 77 deals with cases in which a third party appears to claim title in a rent suit; it gives the Collector certain powers of deciding the question before him, and then contains this proviso: "The decision of the Collector shall not affect the right of either party who may have a legal title to the rent of such land or tenure to establish his title by suit in the Civil Court." There are a number of other sections of similar frame; and the contention is, that the expression "Civil Court" is used in all those sections in such a way as to show that the framers of the Act X of 1859 did not consider that the Rent Courts established by that Act are Civil Courts.

It must be allowed that in those sections there is a certain distinction between the Civil Courts there spoken of and the Rent Courts established by the Act, and that the Civil Courts referred to in s. 77 and the kindred sections, mean Civil Courts exercising all the powers of Civil Courts, as distinguished from the

Rent Courts, which only exercise powers over suits of a limited class. In that sense there is a distinction between the terms; but it is entirely another question whether the Rent Court does not remain a Civil Court in the sense that it is deciding on purely civil questions between persons seeking their civil rights, and whether, being a Civil Court in that sense, it does not fall within the provisions of Act VIII of 1859. It is hardly necessary to refer to those provisions in detail, because there is no dispute but that, if the Rent Court is a Civil Court within Act VIII of 1859, the Collector has, under s. 286, the power of transferring his decrees for execution into another district.

The consequence of holding, as the High Court have held, is, that wherever Act X of 1859 applies, persons seeking their rent against a tenant who is insolvent in the district in which he is sued, have absolutely no remedy against him, though he may be possessed of great wealth in another district. No reason has been assigned, or so much as suggested, why such a distinction should exist between a person who is claiming a debt, founded on rent, and a person who is claiming a debt, founded on any other transaction. The distinction does not exist in any other part of India, neither indeed does it exist in those provinces of Bengal in which Act X of 1859 has been repealed, and the Bengal Act VIII of 1869 has taken its place. Therefore, although it is not impossible that the Legislature should have intended to establish in Manbhum and adjacent districts a distinction between claims for rent and all other claims which does not exist elsewhere, it requires very clear and cogent evidence on the face of the enactments to support the conclusion that they really do intend such a distinction.

That consideration is somewhat emphasised by referring to Act XXXIII of 1852, which was an Act passed to facilitate the enforcement of judgments in places beyond the jurisdiction of the Courts pronouncing the same. It provides that with respect to all Courts—not making a distinction between one Court and another, but with respect to all Courts—judgments may be enforced in the manner provided in the Act, *viz.*, by a transfer of the judgment out of the district of the Judge who pronounces it, into the district of some other Judge within whose jurisdiction

1882

NILMONI SINGH DEO v. TARANATH MUKERJEE.

the debtor possesses property. It it true that in this Act it is said that the word "judgment" means a judgment in a civil suit or proceeding. But suits for the recovery of rent are civil suits or proceedings; and nothing can be clearer on the face of this Act than that the Legislature intended that everybody, who obtained a decree in a Court of Justice, should have a remedy against his debtor, wherever the property of that debtor might be.

The provisions of the Act of 1852 are substantially repeated in Act VIII of 1859; and though that Act speaks of Civil Courts, and not all Courts as Act XXXIII of 1852 does, yet the intention expressed is the same, *viz.*, that all Courts entertaining civil suits of any kind should have this power of transferring their decrees for execution into another district. We find that Act XXXIII of 1852 was repealed in the year 1861, and it is repealed as being simply obsolete, the only reason expressed for repealing it being that Act VIII of 1859 had been passed. If Act VIII of 1859 covered the same ground as Act XXXIII of 1852, the earlier Act had become useless, and might be swept out of the Statute Book. But the earlier Act would not have become useless unless the later Act covered the same ground.

In the opinion of their Lordships it is clear that, looking outside Act X of 1859, no intention of making a distinction between rent suits and other suits in respect to the point now under consideration can be ascribed to the Legislature.

Turning to Act X of 1859, the preamble recites that "it is expedient to re-enact, with certain modifications, the provisions of the existing law in connection with demands of rent, to extend the jurisdiction of Collectors, and to prescribe rules for the trial of such questions." It was pointed out by Mr. Doyne that the particular process now under consideration was not the trial of any question regarding rent. But when we look at the provisions of the Act, it is clear that they go beyond the trial of such questions, and provide for the execution of decrees. At the same time the scope of the Act appears to be only to provide for the execution of the decrees of the Collector within his jurisdiction. There is nothing in the Act which provides for any execution beyond his

jurisdiction, and there is nothing to forbid the conclusion that such executions are left to the operations of Act XXXIII of 1852, or the corresponding portion of Act VIII of 1859.

Section 160 of Act X of 1859 has a bearing on this question. That section provides that an appeal from the judgment of a Collector or Deputy Collector shall lie to the zillah judge. But the zillah judge is a Civil Court to all intents and purposes. It was not disputed that if an appeal went from the Collector to the higher Court,—to the zillah judge or to the High Court,—and the decree of the Collector for rent was there affirmed, it would become the decree of a Civil Court, which could not be excluded from the operation of Act VIII of 1859. Then this consequence would follow, that the act of the parties would alter the nature of the decree; as long as the decree remains the decree of the Collector it is incapable of enforcement in any other district; but let the decree be affirmed by a Court of Appeal, and though it is between the same parties for the same subject matter, it then becomes enforcible in another district. It is very difficult to suppose that any such result as that could possibly have been intended by the Legislature.

These considerations lead to the conclusion that the Rent Courts, established by Act X of 1859, must be held to fall within s. 284 of Act VIII of the same year.

The result is, that their Lordships will humbly advise Her Majesty that the order of the High Court of the 7th July 1880 be set aside, and that it be ordered that the rule *nisi* of the 17th of May 1880, therein referred to, be discharged with costs. The respondent must pay the costs of the appeal.

Appeal allowed.

Solicitors for the appellant, Messrs. *Lambert, Petch,* and *Shakespear.*

Solicitor for the respondent, Mr. *T. L. Wilson.*