

## FULL BENCH.

*Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice McDonell, Mr. Justice Wilson, Mr. Justice Tottenham and Mr. Justice Field.*

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HURO PROSAD ROY (PLAINTIFF) v. KALI PROSAD ROY (DEFENDANT).

*Civil Procedure Code (Act X of 1877), s. 326—Scheme for satisfying decree—Stay of public sale of attached property.*

Where the Collector has applied to the Court under s. 326 of the Civil Procedure Code, proposing a scheme for the payment of decretal money in order to avoid a sale of attached property, it is in the discretion of the Court to authorize the Collector or not, as it thinks fit, to provide for the satisfaction of the decree in the manner proposed; and the Court is bound to hear any objections which may be made by the decree-holder to the feasibility of the proposed scheme, and any evidence that may be offered, in support of those objections; and if after hearing the decree-holders objections, and the evidence which may be offered in support of them, the Court is not fully satisfied that the proposal is feasible, or that it can in all reasonable probability be carried out within the specified period, the Court ought, in the exercise of its discretion, to refuse its sanction.

THE facts of this case, so far as they are material, are fully set forth in the order of reference, which was as follows:—

An important question has arisen in this case as to the proper construction of s. 326 of the Civil Procedure Code; and as there appears to be some difference of opinion upon the subject, we think it right to refer the point to a Full Bench.

After 50 years' litigation, the plaintiff, Huro Prosad Chowdhry, had at last succeeded in obtaining a decree in the Privy Council against the defendants Kali Prosad Roy Chowdhry and others, for a sum of Rs. 36,000, and a further sum of Rs. 6,000 for interest.

Execution upon this judgment was first issued by the decree-holder in the 24-Pergunnahs; but as there was little or no property there to satisfy the amount, the proceedings were transferred to the District Court of Jessore, where the Judge ordered certain properties of the judgment-debtor to be sold on the 1st of April 1880.

On the 30th of March 1880 (two days before the sale), an application was made by the Collector of Jessore, under s. 826 of the Civil Procedure Code, proposing a scheme for the payment of the decretal money within eight years.

The Subordinate Judge made an order approving of this scheme, but the order was afterwards set aside upon a point of law upon application to this Court.

Upon this, the Collector proposed an amended scheme, which was also approved by the Subordinate Judge, for payment of the debt within ten years; but that was again set aside by an order of this Court.

The Collector then proposed a third amended scheme to the Subordinate Judge, proposing to pay the decretal debt within thirteen years; and on the hearing of this application, the decree-holder (amongst other objections) contended that the scheme of the Collector was not feasible, and stated that he was prepared to prove by evidence that, having regard to the real income of the property, it was impossible that the scheme could be carried out within the thirteen years period.

The Subordinate Judge, however, overruled the objection upon the ground that "*the Court in a matter of that kind ought to take the Collector's statement of the scheme as a sufficient guarantee for its fulfilment,*" and that in case the Collector should fail to fulfil the terms proposed, the decree-holder would be at liberty to move the Court to reconsider its order.

The Subordinate Judge then made an order sanctioning the Collector's scheme.

Upon this, a rule was obtained before the First Bench, calling upon the judgment-debtors and the Collector to show cause why the last-mentioned order of the Subordinate Judge should not be set aside, upon the ground that he had accepted the representation of the Collector without inquiry, and without allowing the decree-holder to show, by argument or evidence, that the scheme of the Collector was not feasible.

Upon this rule coming on to be argued, it was contended on behalf of the Collector and the judgment-debtors:—

*First.*—That according to the true meaning of s. 326, the Court was bound to accept the representation of the Collector

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as true, without any inquiry at all as to whether the scheme which he proposed is reasonable or feasible; and  
*Secondly.*—That at the most the Court could only inquire as to whether the period within which satisfaction of the decree was to be obtained, is a reasonable one.

It was further contended that if the scheme upon the face of it appeared feasible, the decree-holder had no right to call evidence to show that it was not so.

In support of this view, we were referred to a decision of Mr. Justice WHITE and Mr. Justice FIELD, dated 9th September 1880, in which those learned Judges had apparently expressed an opinion, that it was not competent for the judgment-creditor to go into evidence to contest the feasibility of the Collector's scheme.

On the other hand, it was contended by the decree-holder that the Court was bound to make inquiry into the feasibility of the scheme, and to allow the decree-holder to call evidence.

We were rather disposed to think that the Subordinate Judge was wrong in refusing to allow the decree-holder to go into evidence; and we had great doubt whether the Court had any right, having once sanctioned the scheme, to reconsider its order.

But having regard to the doubtful language of the section, and the opinion which had been expressed by Mr. Justice White's Bench on a previous occasion, we have thought it right to refer the matter to a Full Bench.

The questions which we desire to refer are—

*First.*—Whether under s. 326 of the Code, the Court is bound to accept the representations of the Collector with regard to the scheme which he proposes as being reasonable and feasible?

*Second.*—Whether upon such representation being made to the Court, the decree-holder is at liberty to satisfy the Court, if he can, by argument and evidence, that the scheme proposed by the Collector is not feasible; or that satisfaction of the decree cannot be made within the period mentioned by the Collector?

Mr. Evans in support of the rule.

The *Advocate General* (Officiating, Mr. Phillips) showed cause.

The following judgments were delivered by the Full Bench.

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GARTH, C.J., (McDONELL, WILSON and TOTTENHAM, JJ., concurring)—We think that under s. 326, it is in the discretion of the Court to authorize the Collector or not, as it thinks fit, to provide for the satisfaction of the decree in the manner which the Collector recommends, and for the purpose of effectually exercising that discretion we consider that the Court is bound to hear any objections which may be made by the decree-holder to the feasibility of the proposed scheme, and any evidence that may be offered in support of those objections.

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It is clear that under s. 320, the word "may" is used in a discretionary sense only, and it would appear to be used in the same sense in the intervening sections; and there certainly seems good reason why the Court should enquire closely into the feasibility of the Collector's proposal, seeing that its effect would be to deprive the decree-holder of the right, which the law gives him, of executing his decree, and not only so, but to protect the debtor's property during all that time from execution at the suit of other creditors.

If upon hearing the decree-holder's objections, and the evidence which may be offered in support of them, the Court is not fully satisfied that the proposal is feasible, or that it can in all reasonable probability be carried out within the specified period, the Court ought, in the exercise of its discretion, to refuse its sanction.

FIELD, J.—Section 326 of the Code of Civil Procedure is as follows: "When, in any local area in which no declaration under s. 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share." In the case which has led to the present reference, the Collector proposed two schemes, both of which were set aside for reasons which it is unnecessary to refer to. The Collector then proposed a third scheme, and the decree-

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holder alleged that this scheme was not practicable, and asserted that if he were allowed to do so, he could prove this allegation by evidence.

The Subordinate Judge was of opinion that he was bound to take the Collector's statement of the scheme, and he declined to receive the evidence offered by the decree-holder.

Now, in order to understand the provisions of s. 326, it is, I think, necessary to refer briefly to the preceding ss. 320 to 325 C. Section 320 provides as follows: "The local Government may, with the sanction of the Governor-General in Council, declare, by notification in the Official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immovable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immovable property, shall be transferred to the Collector;" and then follow certain provisions which enable the Collector to proceed in a particular manner, in order to the execution of any decree that has been so transferred.

Now, the object of these provisions is well known. In different parts of India, the effect of sales in execution of decrees was to transfer landed estates from the old families to modern speculators. A strong opinion was entertained by certain Members of the Government of India, that these results of the administration of civil justice were impolitic and inexpedient; and it was suggested that some procedure might be devised by which the Chief Executive Officer of the district would be enabled to liquidate the debts of encumbered land-holders without the immediate sale of their estates, and so to preserve the old landed gentry of the country. The provisions of ss. 320 to 325 C. were inserted in the Code of Civil Procedure, in order to give effect to these suggestions. Now, there can be no doubt that when the local Government makes a notification under s. 320, in regard to any local area, the execution of all decrees of the class specified in that notification, is transferred from the Civil Court to the Collector, and the Civil Court has no option whatever in the matter. Then comes s. 326, and this section is clearly intended to provide for isolated cases, in which the Collector is of opinion that the

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.

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### PRIVY COUNCIL.

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

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

*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.*

P. C.\*  
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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. PHACOOR, SIR R. COLLIER, SIR R. COUCH, and  
 SIR A. HOBHOUSE.