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about the informer against him. In this case the informer was the sanitary inspector and his name was rightly mentioned in the summons as the prosecutor. Even if it can be urged that the summons should state in so many words that the applicant was being prosecuted for exposing for sale adulterated ghee, that in itself would be no reason for acquitting him. The legislature which enacted section 537 of the Criminal Procedure Code clearly intended that no mere quibbles on the subject of errors, irregularities and omissions in procedure should interfere with substantial justice.

There is no force in this application and I reject it.

APPELLATE CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

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 March, 22

PATIALA DARBAR (APPLICANT) *v.* NARAIN DAS GULAB SINGH (OPPOSITE PARTY)*

U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 7, 13—Execution of decree, passed by court outside United Provinces, against property situate outside these Provinces—Stay of such execution—Injunction against such execution—Jurisdiction of Special Judge to order such stay or grant injunction—Civil Procedure Code, section 151—Inherent powers—Civil Procedure Code, order XXXIX, rule 1.

The U. P. Encumbered Estates Act is concerned exclusively with the protection of land in the United Provinces, and there is no provision in it for issuing a stay order or an injunction where creditors of another province have taken out execution of decrees, passed by courts of that province, against property situate in that province of a landlord who has applied for the benefits of the Act. Nor does section 151 or order XXXIX, rule 1 of the Civil Procedure Code empower or justify a court in the United Provinces to issue a stay order or an injunction in such cases.

On the question whether such creditors must file their claims before the Special Judge in these provinces, and in

*First Appeal No. 248 of 1936, from an order of N. L. Singh, Special Judge first class, of Saharanpur, dated the 15th of November, 1935.

default their claims and the decrees obtained by them in another province would be deemed under section 13 of the Act to be duly discharged, so as to be unexecutable in that province,—

COLLISTER, J., was inclined to hold in the negative;

BAJPAI, J., expressed no opinion.

Dr. N. P. *Asthana* and Mr. R. N. *Gurtu*, for the appellant.

Mr. S. N. *Verma*, for the respondent.

COLLISTER, J.:—These are two appeals under section 45 of the U. P. Encumbered Estates Act. Each arises out of a stay order which has been passed by the Special Judge of Saharanpur.

The Jagadhari estate, i.e., the respondent to these appeals, was under the court of wards, but it has now been released. The owners of the estate traded in the name of Narain Das Gulab Singh. The Patiala Darbar obtained a money decree against the respondent at Ambala, and a similar decree was obtained there by the Punjab National Bank. The Jagadhari estate has property in the United Provinces as well as in the Punjab. Each of the two aforesaid decree-holders put his decree into execution against immovable property belonging to the respondent in the Punjab. While these decrees were under execution, the respondent presented an application before the Collector of Saharanpur under section 4 of the U. P. Encumbered Estates Act, and in due course that application was sent, under section 6 of the Act, to the Special Judge. Thereafter the respondent applied for stay of proceedings at Ambala, and the Special Judge has issued a stay order in each case. One order is dated the 15th of November, 1935, and the other is dated the 19th of March, 1936. The Judge who passed the latter order was the successor in office of the Judge who passed the order dated the 15th of November, 1935.

The learned Judge who passed the order of the 19th of March, 1936, purported to act under section 151 of the Civil Procedure Code. I may say at once that in my

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opinion a court in the United Provinces is not competent under section 151 to issue a stay order to a court in another province; and there was no real controversy before us on this point. Whether such court can issue an injunction to a creditor in another province, either under the specific provisions of the Civil Procedure Code or in exercise of its inherent power, is a matter which will have to be considered in its proper place.

Collister, J.

Learned counsel for the appellants pleads that the object of the U. P. Encumbered Estates Act is solely to protect encumbered estates in the United Provinces, not to protect debtors. He argues that the Act was not intended to affect and cannot affect property in another province. *Per contra* learned counsel for the respondent contends that, having regard to the scheme of the Act, a Special Judge in the United Provinces is competent to issue an injunction to a creditor in another province who is seeking to execute his decree against property of the indebted landlord in that province. He points out that under section 4 of the Act the landlord applying for relief has to disclose in his application to the Collector under that section *all* his debts, wherever they may exist. Then under section 8 the Special Judge will call upon him to submit full particulars in respect to his debts, the nature and extent of his proprietary rights in land, the nature and extent of such property as may be liable to attachment and sale under section 60 of the Civil Procedure Code and the names and addresses of his creditors. Neither his debts nor such property as is liable to attachment and sale under section 60 are restricted to the United Provinces. Land is defined in section 2(d) as "a share of or interest in a mahal in the United Provinces"; but land in another province would presumably be included in "property which is liable to attachment and sale under section 60". Under section 9(1) a notice is then published calling upon *all* persons having claims, whether decreed or undecreed, against the person or property of the landlord to present a

written statement of their claims, and a copy of such notice is sent under sub-section (2) by registered post to each of the creditors whose names and addresses have been given by the applicant. Under section 10 every claimant referred to in section 8 is required in the written statement of his claim to give full particulars thereof and to state, so far as they are known to or can be ascertained by him, the nature and extent of the landlord's proprietary rights in land and the nature and extent, if any, of the landlord's property other than proprietary rights in land. He is also required to deliver to the Special Judge all documents upon which he relies. Notice is then published under section 11 specifying the property which has been disclosed by the applicant and also the property which has been mentioned by the various claimants. Section 12 provides for the annulment of certain transfers, and it is argued—and no doubt rightly—that this would include a transfer to a resident of another province. Section 13 provides that "Every claim decreed or undecreed against the landlord in respect of a private debt . . . shall, unless made within the time and in the manner required by this Act, be deemed for all purposes and on all occasions to have been duly discharged."

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The Special Judge then proceeds under section 14 to hear evidence and examine each claim on a date fixed by him and to determine the amount, if any, due from the landlord to each claimant, and thereafter he has to pass a simple money decree in respect of each amount so found. Such decrees are sent to the Collector for execution under section 19. The next chapter, i.e., chapter V, provides for the execution of decrees and the liquidation of the landlord's debts by the Collector. Section 24(3) provides that "for the purpose of execution against property outside the United Provinces the decrees passed by the Special Judge shall be deemed to be decrees in favour of the Collector."

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As I understand learned counsel for the respondent, his argument, based on the general scope and object of the Act, is that it was the primary intention of the legislature that relief be granted to indebted landlords of the United Provinces, that all claims—whether against the person or property of the landlord and whether provincial or extra-provincial—should be settled by the Special Judge, that the whole body of creditors should come before that court, that for the purposes of the Act all property of the landlord should be taken into account and that it would be a violation of the spirit of the Act and the intention of the legislature if, while the landlord's land in the United Provinces is protected (I use the word "protected" in its ordinary sense, and not in the special sense in which it is defined in section 2(e) of the Act), land belonging to him in another province should have no protection.

Whatever may have been in the mind of the legislature, I do not think that the intention which is contended for by learned counsel for the respondent can be read into the Act as framed. I am of opinion that the view which has been advanced before us by learned counsel for the appellants must prevail. I will proceed to give my reasons.

Sub-section (1) of section 80A of the Government of India Act, as amended by the Act of 1919, provides that "The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province." In certain cases the previous sanction of the Governor-General was necessary; and such sanction was obtained for the Act with which we are now dealing, presumably for the reason that it regulates a central subject, i.e., the Code of Civil Procedure, within the meaning of section 80A(3)(e) of the Government of India Act. The preamble of the U. P. Encumbered Estates Act states that "Whereas it is expedient to provide for the relief of encumbered estates

in the United Provinces . . .” As I have already shown, section 2(d) of the U. P. Encumbered Estates Act defines “land” as a share of or interest in a mahal *in the United Provinces*. Section 7(1)(a) provides that when the Collector has passed an order under section 6, all proceedings pending in any civil or revenue court *in the United Provinces* in respect of any debt to which the landlord is subject or with which his immovable property is encumbered shall be automatically stayed.

It would therefore seem that the Act is concerned exclusively with the protection of land in the United Provinces; and there is no provision in it for issuing an injunction to creditors of another province who have taken out execution against property of the landlord in that province. Order XXXIX, rule 1 of the Civil Procedure Code does not apply in terms, because it cannot be said that such property is being “wrongfully sold”. Also that rule is concerned with injunctions of a purely temporary nature. It is argued by learned counsel for the respondent that the Civil Procedure Code is not exhaustive and that the court in the United Provinces is competent *ex debito justitiae* to issue such an injunction. He pleads that where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts or employing such means as are necessary to its execution. Even assuming that the United Provinces can legislate so as to protect property of a landlord in another province by diminishing its burden, I would hesitate, in the absence of any specific indication of such intention in the Act itself, to hold that the Special Judge is competent to issue an injunction indefinitely restraining a creditor in the Punjab from executing his decree against property of the debtor landlord in that province.

Apart from the provisions of section 13 there is nothing in the Act to indicate that a creditor who has obtained a decree in the Punjab or in any other province is precluded from executing his decree by the ordinary

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process of law against property in that province. Section 13 provides that a claim, if not made before the Special Judge within the time allowed, "shall be deemed for all purposes and on all occasions to have been duly discharged." These words are certainly very wide, but I doubt very much whether under the Act a court in the United Provinces has power to declare that a decree obtained in the Punjab by a creditor who has not had recourse to the Special Judge is discharged so as to be unexecutable in that province. I am inclined to think that the operation of section 13 is limited to courts having jurisdiction in the United Provinces. As I have already shown, the stay of proceedings and avoidance of attachment *et cetera* provided by section 7 are confined to courts in the United Provinces; and this may afford some clue as to the intention of the legislature.

It is argued that if the injunction prayed for is not issued, undesirable consequences will ensue, inasmuch as the creditors in the Punjab will have an unfair advantage; it is said that they will be able to have the property in the Punjab sold up without any reduction in the amount of the debt and can also apply to the Special Judge and obtain a decree which can be executed by the Collector against the property in the United Provinces. This argument presupposes that a creditor will be at liberty to execute two different decrees arising out of one and the same cause of action. That question is not before us and so it is not necessary to discuss what the legal position would be. On the other hand, if a creditor of the United Provinces is vigilant he may be able to have his simple money decree executed against the property in the United Provinces and also have it executed by the Collector under section 24(3) of the Act against property in the other province.

A similar point arose in the Chief Court of Oudh in the case of *Lalmohan Trivedi v. Ram Chandra Awasthey* (1), where it was held that the U. P. Encumbered Estates

(1) A.I.R. 1938 Oudh 87.

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Act "provides for stay of proceedings in civil and revenue courts in the United Provinces only on an order made by the Collector under section 6, and the preamble of the Act also shows that the Act was passed to provide for the relief of encumbered estates *in the United Provinces.*" It was held that a court in the United Provinces is not justified in staying execution proceedings in a court not situated in this province or in issuing an injunction to a party residing outside the jurisdiction of the court.

The landlord's property in another province has to be disclosed in order to facilitate execution under section 24(3), but in my opinion the Special Judge is not competent under the Act to exercise control over such property by issuing an injunction to a creditor who has obtained a decree in that province restraining him from executing it against such property. If the legislature had contemplated the issuing of such an injunction, a provision to that effect would presumably have been inserted in the Act. It may be argued that it would be more in consonance with the spirit and intention of the Act that there should be such a provision. Be this as it may, the fact remains that the Act is completely silent in respect to any measures for the protection of the property in another province against a creditor whose suit has been decreed in that province, and in the circumstances I do not think that the Special Judge can invoke any inherent powers for the purpose of achieving that object.

The matter is not without difficulty, but having regard to the provisions of the Act as they stand I am of opinion that an injunction cannot legally be issued by the Special Judge to restrain the appellants from executing their decrees against the property of the respondent in the Punjab.

BAJPAI, J.:—I agree. For the reasons given by my learned brother I am of the opinion that a court in these provinces is not justified in issuing an order of stay or in issuing a temporary injunction either under section 151

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of the Civil Procedure Code or under the provisions of order XXXIX, rule 1 of the Civil Procedure Code to a creditor who has obtained a decree against the landlord in another province. The question whether such a creditor should file a claim before the Special Judge in these provinces and whether his claim, if not made within the time and in the manner required by the U. P. Encumbered Estates Act, will be deemed for all purposes and on all occasions to have been duly discharged is not before us, and I express no opinion on the point. It will be for such a creditor to consider his best interests in the matter and to take such steps as he may be advised to do. We are told that the Punjab National Bank Ltd., Ambala, has not filed any claim before the Special Judge and the Darbar Patiala has filed a claim only under protest. I take it, therefore, that the two appellants before us have not filed any claim before the Special Judge, and under those circumstances I am of the opinion that the order passed by the court below was not justified.

BY THE COURT:—We allow this appeal and set aside the order of the court below. The appellant is entitled to his costs of the appeal.

*Before Sir John Thom, Chief Justice, and Mr. Justice
Ganga Nath*

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RAGHUBIR SINGH (DECREE-HOLDER) v. SECRETARY OF
STATE FOR INDIA (JUDGMENT-DEBTOR)*

Decree for damages for personal injury—Court must ascertain and award the total amount of damages, present and prospective—Prospective damages cannot be left to be ascertained in future in the execution department—Such part of decree a nullity—Cannot be executed—Jurisdiction—Execution court going behind the decree and questioning the jurisdiction—Civil Procedure Code, order XX—Cases in which preliminary decrees can be passed.

In a suit for damages for personal injuries it is the duty of the trial court itself to determine the amount of the defend-

*Appeal No. 1 of 1935, under section 10 of the Letters Patent.