

subsequently been held by a civil Court that the land is his. The application of Maung Nwe and Maung Po Byu will, accordingly, be allowed, and their convictions and sentences set aside, and the fines of Rs. 10 each, which have been paid, refunded to them.

1937
 MAUNG
 NWE
 v.
 MAUNG
 PO HLA.
 MOSELY, J.

CIVIL REVISION.

Before Mr. Justice Mosely.

DESRAJ CHANANLAL

v.

RAMJASRAN MADANCHAND.*

1937
 Mar. 2.

Shan States Courts—Applicability of Civil Procedure Code—Burma Laws Act (XIII of 1898), s. 10—Political Department Notification No. 33 of 21st June 1926—Burma Courts Act (Burma Act XI of 1922), s. 10 (2)—Shan States Civil Justice Orders, 1900 and 1906—Attachment before judgment—Property situate in Shan States—No District Court in Shan States—Civil Procedure Code (Act V of 1908), s. 136.

The Civil Procedure Code is not in force in the Shan States. In virtue of the power contained in s. 10 of the Burma Laws Act by Political Department Notification No. 33 of 21st June 1926 sections 36, 38, 39 and 41, and rules 4, 5 and 6 of Order 21 only of the Civil Procedure Code have been extended to the Shan States. The Burma Courts Act which establishes grades of civil Courts in Burma does not extend to the Shan States. The Shan States Civil Justice Orders of 1900 and 1906 regulate the simplified procedure of officers administering civil justice and no power to issue attachment before judgment is conferred upon any of the Shan States Courts.

S. 136 of the Civil Procedure Code authorises the issue of an order of attachment before judgment to any District Court in British India. There is no District Court or Court with the powers of a District Court under the Civil Procedure Code established in the Shan States to which an order of attachment before judgment could be sent. *Held* it is illegal for a Court in British Burma to issue an order for attachment before judgment of property situate in the Shan States.

Chaudhri v. Dina Nath, A.I.R. (1936) Lah. 330; *Mela Mal v. Bishun Das*, A.I.R. (1931) Lah. 723; *Soma Sundaram v. Mulhu Verappa*, 4 B.L.T. 89, referred to.

K. C. Sanyal for the applicant.

Hormasjee for the respondent.

* Civil Revision No. 259 of 1936 from the order of the Subdivisional Court of Mandalay in Civil Misc. Case No. 32 of 1936.

1937
 DESRAJ
 CHANANLAL
 Z.
 RAMJASRAN
 MADAN-
 CHAND.

MOSELY, J.—This is an application in revision against the order of the Subdivisional Court of Mandalay, allowing the issue of an attachment before judgment of property belonging to the defendant, situate in Pindya in the Southern Shan States. The order was sent to the Assistant Superintendent at Kalaw, who again sent it to the State Judge at Pindya, and the property was actually attached. An application for removal of the attachment, on the ground that it was an illegal one, was disallowed by the Judge, who held that no such application lay under Order 21, rule 58. See however Order 38, rule 8. The claim is to be investigated as under that rule. The Judge also gave reasons why he considered that the order was a legal one.

Under section 136 of the Code of Civil Procedure, when an application is made that any property should be attached under any provision of the Code not relating to the execution of decrees, and such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, make an order of attachment, and send a copy of its order to the District Court within the local limits of whose jurisdiction such property is situate.

It has been held, [vide *Soma Sundaram v. Muthu Verappa* (1), a decision of the Chief Court of Lower Burma, *Chaudhri Kanhya Ram v. Dina Nath Hardial Mall* (2) and *Mela Mal v. Bishan Das* (3)], that section 136, Civil Procedure Code, authorizes the issue of an order of attachment before judgment to any District Court in British India. It was said in the last mentioned case that the Civil Procedure Code recognizes only Courts established by the order of the

(1) 4 B.L.T. 89.

(2) A.I.R. (1926) Lah. 330.

(3) A.I.R. (1931) Lah. 723.

Governor-General in Council, and it has been held in that case that the Court was right in refusing to send a warrant of attachment before judgment to the Consular Court at Kashgar in China as that was created by His Majesty in Council under the Foreign Jurisdiction Act, though the Consul exercised the powers of a District Judge, and the Court was deemed to be a District Court for the purposes of the Code of Civil Procedure and other Indian enactments relating to the administration of civil justice.

By section 1, sub-section (3), Civil Procedure Code, only section 1 and sections 155 to 158 were extended to the whole of British India. The rest of the Code was extended to the whole of British India except the Scheduled Districts. By Foreign Department Notification No. 791E, dated the 4th May 1886, the whole of Upper Burma, including the Shan States, was declared to be part of British India. By Foreign Department Notification No. 789E, of the same date, Upper Burma, except the Shan States, was constituted a Scheduled District. Under Notification No. 1 of the 1st January 1909 the whole of the Code of Civil Procedure was extended, under the power conferred by section 5 of the Scheduled Districts Act, XIV of 1874, to Upper Burma, (except the Shan States).

Under section 10 of the Burma Laws Act XIII of 1898 the Local Government was given power to extend any enactment which was in force in Upper Burma at the time of the extension, and by Political Department Notification No. 33 of June 21st 1926 only sections 36, 38, 39 and 41, and rules 4, 5 and 6 of Order 21 of the First Schedule of the Code of Civil Procedure were extended to the Shan States.

The Burma Courts Act, XI of 1922, which establishes grades of civil Courts in Burma, and is

1937
 DESRAJ
 CHANANLAL
 &
 RAMJASRAN
 MADAN-
 CHAND.
 MOSELEY, J.

1937
 DESRAJ
 CHANANLAL
 v.
 RAMJASRAN
 MADAN-
 CHAND.
 MOSELY, J.

said therein, section 1 (2), to extend to the whole of Burma, does not however extend to the Shan States, *vide* section 10 (2) of the Burma Laws Act. See also Notifications Nos. F 20 A of October 1st 1922 and 20 A II of January 2nd 1923 issued under the Government of India Act, 1915.

Under section 12 of the Burma Laws Act, the Local Government had power to appoint officers to undertake the administration of civil justice and to define the powers and regulate the procedure of officers so appointed, and the powers and procedure of the Courts in the Shan States were fixed by the Shan States Civil Justice Order, 1900, and the Shan States Civil Justice (Subsidiary) Order, 1906. In those orders, which are at pages 56 to 76 of the Shan States Manual, a certain simplified procedure is prescribed, and admittedly the power to direct attachment before judgment is not one of the powers conferred on any Court in the Shan States. The Subsidiary Order relates to the administration of justice within the notified areas of Kalaw, Taunggyi and Loimwe only. Under both orders a rule has been passed, *vide* Political Department Notifications Nos. 16 and 17 of the 19th June 1935, relating to the powers of any Court in the Shan States to execute any order for execution sent to it for execution under the provisions of Order 21 of the First Schedule of the Code of Civil Procedure, while under section 13 of each Civil Justice Order there are similar provisions for the execution by any Court in the Shan States of any decree sent to it for execution. There is no provision in these orders for Courts in the Shan States executing any order of any other Court which is not made in execution.

The main argument of the advocate for the applicant in the present case is that as Courts in

the Shan States have no power to attach property before judgment in suits in the Court itself, therefore they have no power to execute orders for such attachment sent to them by a Court in British India outside the Shan States. This argument, I think, has no force whatever. The mere fact that a simplified procedure has been prescribed for a backward area like the Shan States does not affect the power of the Court there to carry out the orders of other Courts in other places. That is a matter of the comity of Courts. Similarly, there is nothing to prevent the Court at Mandalay from issuing orders to a Court in the Shan States, provided that the order will be carried out; for Courts will not issue orders that cannot be carried out any more than Courts will entertain actions to try matters where they have no power to enforce their decisions: see on this, "The Laws of England" by Halsbury, (Article: Courts, Volume 9, page 16).

There is, however, another line of argument which I think is decisive to show that the order complained of could not legally be passed. Under section 136, Civil Procedure Code, the order of attachment is to be sent to the District Court within the local limits of whose jurisdiction the property is situate. Admittedly, no District Court, or Court with the powers of a District Court under the Civil Procedure Code, has been established in the Shan States to which the order of attachment before judgment in question could be sent. The Court of the Assistant Superintendent at Kalaw is not a District Court, and has not been empowered to exercise the duties of a District Court.

The order for attachment therefore was wrongly issued, and must be withdrawn.

1937

DESRAJ
CHANANLAL
v.
RAMJASRAN
MADAN-
CHAND.

MOSELY, J.