

If it was intended to submit in this case for the consideration of a Full Bench the question referred in Special Appeal No. 868 of 1870 as to whether an appeal lies from the decision of a Moonsiff directing the filing of an award made under a reference out of Court, I desire to refer to my judgment in the last case in which I have considered at some length this question, for the proper answer, namely that no appeal lies.

In this case, I observe that the Moonsiff, after having allowed oral evidence to be adduced on the subject of the issue, whether the defendant consented or not to refer matters to arbitration, decided upon such evidence against the defendant, and held that he had consented. If the views I have expressed in the last case, with reference to the meaning of section 327 are correct, the denial by the defendant of the submission to arbitration should have been held to amount to sufficient cause shown against the award, so as to have stayed further action on the part of the Court. As, however, no appeal lies in this case, any error which has been committed cannot be rectified by this Court sitting as a Court of Appeal. If the parties consider the position I have advanced tenable, they will probably take proper steps to have the decision of the Moonsiff set right.

1871

SASHTI
CHARAN
CHATTERJEE
v.
TARAK
CHANDRA
CHATTERJEE.

LALA ISHWARI
PRASAD
v.
SIR BHANJAN
TEWARI.

[ORIGINAL CIVIL.]

Before Mr. Justice Phear.

BALARAM MULLICK AND ANOTHER v. E. R. SOLANO.

Act VIII of 1359, s. 81—Execution of Decree—Jurisdiction.

1872

March 7.

The words, in section 81 of Act VIII of 1859, "where the defendant is about to dispose of his property or any part thereof, &c.," refer only to property within the jurisdiction of the Court where the suit is pending; therefore, where an order under that section by the 1st Subordinate Judge of the 24-Pergunnas in respect of property in Calcutta was sent up to the High Court, in order that it might be endorsed in accordance with the provisions of Section 1 of Act XXIII of 1840, the High Court refused to endorse it.

In re Abraham (1) not followed.

An order dated March 2nd had been made in this suit by the 1st Subordinate Judge of the 24-Pergunnas, to restrain Messrs.

1872

BALARAM
MULLICK

v

E. R. SOLANO.

Mackenzie Lyall and Co., of Calcutta, from paying over the proceeds of certain property which the defendant had directed them to sell, in view of his proceeding to England.

The order was as follows :—

“ Whereas the aforesaid plaintiffs have represented that the defendant is about to leave this country for England after selling all his moveable property, and have applied for the attachment of Rs. 1,500 out of the sale proceeds of the said property, the sale of which is stated to be conducted by you this day, the 2nd instant, at the house of the defendant in Bhowanipore, you are hereby prohibited from making payment of the said amount of Rs. 1,500, or whatever sum may be due by you to the said defendant on account of the sale proceeds of the said property, to the defendant or to any person whomsoever, until the further orders of the Court.”

The notice was directed to be served within the local limits of the jurisdiction of Her Majesty's High Court of Judicature at Fort William in Bengal, by the Sheriff as required by Act XXIII of 1840.

That Act provides that “ a copy of such writ, warrant, or other process, authenticated as such by the attestation of the Court, Judge, or Magistrate signing or issuing the same, accompanied by a certified translation in the English language, shall be presented to any Judge of Her Majesty's Courts, who may thereupon under his hand and signature endorse and direct the same to be executed within the local limits of Her Majesty's Courts by the Sheriff, &c.”

The order with a translation was sent to the High Court for endorsement as provided in Act XXIII of 1840. Mr. Justice Phear, on 4th March, made the following note on the order :—

“ It appears to me that this notice of attachment is made without jurisdiction, and I therefore cannot endorse it.”

The order was returned to the Court of the 24-Pergunnas but was sent back with a letter in which the Judge referred to the case of *In re Abraham* (1) for the consideration of the High Court.

Mr. Evans now again presented the order for endorsement. He referred to the case of *In re Abraham* (1) and Act XXIII

of 1840, and Act VIII of 1859, section 81, and contended that the first provisions in the latter section, *viz.*, "where the defendant is about to dispose of his property or any part thereof," applied to property, either within or without the jurisdiction of the Court making the decree.

PHEAR, J.—During the [experience, I may say considerable experience, which I have now had in this Court, I have been obliged to consider the scope of this section very many times, and I certainly feel myself unable to take the view which was taken of it by the Judges of the Bombay Court in *In re Abraham* (1). I apprehend that express words are necessary in order to give to a Court of locally limited jurisdiction a power of action beyond its local limits. I don't find any words sufficient for this purpose in this section. It appears to me that the common sense meaning of the section is that the property there spoken of is property within the jurisdiction of the Court, *viz.*, property which, when the decree is made, the Court would be able to reach and make available in satisfaction of the decree. That does not seem to me a reasonable construction of the section which makes the intention to dispose of property anywhere in the world, in England or America for instance, the event or contingency for founding the power of attaching it, intended by the Legislature to be alternative to removing the property out of the local jurisdiction. I see nothing in the Act to indicate that the Legislature intended an extra-jurisdiction power of attachment to be given to a local Court before judgment, and therefore, before the merits of the plaintiff's claim against the defendant have been heard and determined, while it most distinctly left them without that extra-jurisdiction power of attachment after decree, *i. e.* at a time when the merits between the parties had been ascertained, and it might be expected that Courts would be endued with the fullest power of giving relief to the judgment-creditor. I am unable to alter the view with regard to the scope of this section which I have already expressed. I think the order made is *ultra vires*, and I cannot therefore endorse it.

Application refused.

Attorneys for the plaintiffs : Messrs. *Swinhoe Law & Co.*

(1) 6 Bom. H. C., 170.

1872

BALARAM
MULLICK
v

E. R. SOLANO.