might become a resident within the limits of the town of Calcutta after the suit might be commenced, has been repealed by Act XXII of 1843, but no more. Nor could suits for land in the Mofussil against a person subject to the jurisdiction of this Court be brought in the High Court.

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The question of jurisdiction cannot be raised after the order of Glover and Mitter, JJ.

Mr. *Branson* (in support of the rule).—The suit was for recovery of money. The decree was in the first part for money, and in the latter part relief was granted against Leslie personally. S. 5, Act VIII of 1859, relates to suits for possession of land. There is a difference in the wording of s. 5, Act VIII of 1859, and the wording of cl. 12, s. 1, Act XIV of 1859. The words in the latter are "recovery of immoveable property or of any interest in immoveable property." Under s. 5, Act VIII of 1859, neither a suit for foreclosure, nor a suit for redemption, is a suit "for" land, though the decisions are the other way. The decree in a suit for land can be executed only under ss. 190, 199, 223, and 224, Act VIII of 1859 None of these sections applies to the decree made in this suit. The suit was for recovery of money by enforcing a contract; and if the money was not paid, then for sale of the land. It was not for recovery of possession if the money was not paid. The defendant was described in the plaint as of Calcutta, therefore on the face of the plaint the question of jurisdiction arose. [MARKBY, J.—Can we set aside a decree in part, part being for sale of land, and part being a personal decree?] It was so set aside in *Mannu Lal* v. *Pegue* (1) for want of juris-

(1) *Before Mr Justice L. S. Jackson and Mr. Justice Mitter.*

The 18*th November* 1868.

MANNU LAL (PLAINTIFF) *v.* MR. T. W. PEGUE AND OTHERS (DEFENDANTS).*

Baboo *Debendro Narayan Bose* for the appellants.

Mr. C Gregory and Baboo *Ashuto sh Chatterjee* for the respondents.

I. L. R. 1 Cal 166.

JACKSON, J.—The Courts below have

* Special Appeal, No. 1211 of 1868, from a decree of the Officiating Judge of Patna, dated 18th December 1867, affirming a decree of the Principal Sudder Ameen of that district, dated the 13th February 1867.

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diction. The decree in the case was passed wholly without jurisdiction. Even if the decree was partially good, the part which rendered Leslie personally liable was wholly without jurisdiction. (The *Advocate-General*.—We are not called on by the rule to argue that point.) The application was made on the authority of *Mannu Lall* v. *Pegue* (1). The drawing up of the rule was with the officers of the Court. (The *Advocate-General*.—I came to show cause against the rule as drawn up.) As to the question of jurisdiction of this Court, see *Greesh Chunder Lahooree* v. *Kashersuree Dabee* (2), *Showdaminee Dossee* v. *Manick Ram Chowdhry* (3), *Maharaja Dhiraj Mahtab Chund Bahadur* v. *Shagor Kundu* (4), *In re Srimati Nassir Jan* (5), and *In re Durga Charan Sirkar* (6). Even if the decree can be upheld so far as it related to the sale of the mortgaged premises, it cannot be upheld so far as it is a personal decree against Leslie.

The *Advocate-General* in reply contended that the rule was as against the whole decree. A part of the decree could not be set aside under this rule.

The judgment of the Court was delivered by,

MARKBY, J. (after stating the rule and the plaint, continued)

held that the suit was brred by limitation. It was a suit for a sum of money to be recovered by the sale of the property pledged. The date of the bond was the 11th June 1854, and the money was payable, principal and interest, within two years from that date. In this suit, which was commenced in December 1866, the plaintiff asked both for a decree to be enforced against the person of the borrower, and also for a decision that the property pledged should be sold under the terms of the bond. The lower Court was of opinion that a suit ought to have been brought under cl. 10, s. 1 of Act XIV of 1859. It has been held in a similar case by a Full Bench of this Court—*Surwan Hossein* v. *Shahazadah Golam Mahomed* (a)—that a suit in so far as it relates to the sale of the mortgaged property is really a suit to enforce an interest in immoveable property being a charge created on that property by the bond in suit, and that it comes within the provisions of cl. 12, s. 1, Act XIV of 1859 and not within those of cl. 19.

The decision of the lower Appellate Court is set aside, and this case will be remanded in order that a decision may be come to on the remaining issues; but of course, the plaintiff's suit, in so far as he sought for a decree against the borrower personally, was properly dismissed.

(a) 9. W. R., 170.

(1) *Ante*, p. 175.
(2) 8 W. R. 26.
(3) 9 W. R., 386.
(4) 5 B. L. R., App., 91.
(5) 7 B. L. R., 144.
(6) 2 B. L. R., A. C., 165.

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—The mortgage-deed is not before us, but it is stated to have been a conveyance by way of mortgage, and was made in Calcutta between Europeans: it was, therefore, probably in the ordinary English form. It contained a power of sale, and a covenant for repayment of the money.

It is said that this was not a suit cognizable by the Judge of the 24-Pergunnas, because it was not a suit for land. It was contended that it was a suit upon a cause of action which arose in Calcutta, where the defendant was described as dwelling. There was some doubt whether the defendant in fact then resided in Calcutta, or elsewhere, but it was admitted that the defendant was not dwelling, or personally working for gain in the district of the 24-Pergunnas when the suit was brought: the plaintiffs however contended that the Judge of the 24-Pergunnas had jurisdiction, inasmuch as this was substantially a suit for land.

I think that the plaint, so far as it asks for a sale of the mortgaged property in satisfaction of the mortgaged debt, is a "suit for land" within the meaning of s. 15 of the Code of Civil Procedure which regulates the jurisdiction in this case. Mr. Branson contended that these words should be read as signifying those suits alone in which the land itself is sought directly to be recovered. It was admitted that a much wider construction had been put by Macpherson, J., upon the similar words of the Charter of the High Court; that learned Judge holding that a suit for foreclosure by the mortgagee was as such a suit for land, in *Bibee Jaun* v. *Meerza Mahommed Hadee* (1), and that a suit for redemption was so also, in *Sreemutty Lalmoney Dossee* v. *Juddoonauth Shaw* (2), but it was contended that these decisions were not correct. We see no reason to suppose this. They have never been questioned as far as we are aware. On the contrary, the uniform practice of this Court on its Original Side has been in accordance with them. They are also supported by the decision in *Surwan Hossein* v. *Shahazadah Golam Mahomed* (3,) where it was held that a suit brought to enforce a security against land was a

(1) 1 I. J., N. S., 40.
(2) *Id.*, 319.
(3) 9 W. R., 170.

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suit for recovery of an interest in immoveable property within the meaning of cl. 12 of s. 1 of Act XIV of 1859. Upon the authority of these decisions, I hold that a suit for land includes any suit in which a decree is asked for operating directly upon the land, and therefore includes any suit brought to enforce a security upon land.

It was contended, however, that this was a suit neither for foreclosure nor redemption, nor in any way to enforce a security upon land, but simply for money, to be recovered by the sale of the plaintiff's property through an attachment and sale in the usual way. This however is not so. It is perfectly well established that a decree in a suit like the present in the Mofussil Courts enables the plaintiff to sell the mortgaged property as it stood at the time of the mortgage, and clear of all subsequent incumbrances; and that such a sale completely bars redemption; whereas a suit brought simply on the provision to repay the loan will only enable the plaintiff to sell the interest which the defendant has at the time of execution. I think that we cannot upon this rule enter into any inquiry as to the origin or validity of a procedure so well established.

This being so, I hold that this is a suit for land in the same sense that a suit for foreclosure or redemption on the Original Side has been held to be a suit for land.

Lastly, it is said by Mr. Branson that the decree is, at any rate, without jurisdiction, so far as it directs execution to be taken out against the property of the defendant, other than the mortgaged property. This contention is to some extent right. The Judge had no jurisdiction to entertain a suit upon the covenant to repay. This has no connection with a suit for land; and so far as it is a cause of action, it did not arise within the 24-Pergunnas. Before, therefore, proceeding with this part of the suit, the leave of this Court should have been obtained. But then there is this difficulty in rectifying the error upon this application. The Judge of the 24-Pergunnas had authority to order the mortgaged property to be sold; he had also authority to find what sum was due from the defendant to the plaintiff upon the mortgaged security; he had also authority to order the defendant to pay costs. Now we have not the actual

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decree before us, but only the minutes of the decree, and supposing the decree to be in the same terms as the minutes, the only part of the decree which relates to this portion of the suit is that which directs that, "in the event of the said purchase-money being less than the total amount and principal, interest, and costs hereby declared to be due to the plaintiffs, the plaintiffs shall be at liberty to execute the decree against the defendant or his property for the balance which may remain due." But even this part of the decree is perfectly within the District Judge's jurisdiction so far as relates to costs ; and if the only balance which is now due under the decree is for costs, or if the plaintiff is only executing the decree in respect of costs, the execution proceedings which are now being carried on, and which the plaintiff desires to get rid of, are perfectly legal And we have no materials for separating the legal from the illegal part of this portion of the decree. Indeed, this result is not at all contemplated either by the petition on which the rule is founded, or by the rule itself, which both pray that the decree may be altogether set aside ; and that is the only point the Advocate-General has argued. I think, therefore, that we ought not to set aside any part of this decree, and that the rule should be discharged with costs.

Rule discharged.

Since the above judgment, a rule has been issued upon the application of Leslie, calling upon the Land Mortgage Bank of India to show cause why the decree of the Court of the Judge of 24-Pergunnas made on the 16th October 1871 should not be set aside in so far as it directs that the plaintiffs shall be at liberty to execute the decree for any balance that might remain due after the sale of the property covered by the mortgage-deed, and why the proceedings taken in execution of the decree in the Court of the Judge of Moorshedabad for recovery of such balance should not be quashed.