

1868
Dec. 9.

Before Mr. Justice Kemp and Mr. Justice E. Jackson.

TULSI SAHU AND OTHERS (PLAINTIFFS) v. MAHADEO DAS AND
ANOTHER (DEFENDANTS)*.

*Registration Act (XX. of 1866), ss. 82 to 84—Refusal to register,—Act XVI
of 1864, s 15.*

A sued B to enforce registration of a potta, on the allegation that the Registrar had refused registration on the ground that B denied before him the execution of the deed. Held that, under Act XX. of 1866, a suit would not lie: A should have proceeded under section 83 of the Act.

THIS was a suit to enforce the registration of a deed, being a ticca potta, of which the defendants, before the Registrar of Deeds, denied the execution. The Judge held that the suit would not lie, inasmuch as Act XVI. of 1864 had been repealed by Act XX. of 1866, and that section 15 of the former Act, under which a suit might be brought to enforce registration, had been replaced by section 84 of the latter Act, in which section the course is laid down which ought to be pursued when a Registrar refuses to register a document, the registration of which is compulsory. The suit of the plaintiffs was, therefore, dismissed with costs.

The plaintiffs appealed.

Mr. B. E. Twidale for appellants.

Mr. C. Gregory for respondents.

KEMP, J. (after stating the facts as above, continued):—The decision of this case was postponed for the decision of *Sheikh Rahmatulla v. Sheikh Sariutulla Kagchi* (1) referred to by this Bench. That decision has now been received, although the point for decision in this case has not been distinctly decided by the Full Bench, inasmuch as the point referred to them was a different one; still, from the remarks of some of the learned Judges who formed the Full Bench, we think it may be gathered that,

* Special Appeal, No. 1422 of 1868, from a decree of the Judge of Tirhoot, reversing a decree of the Sudder Ameen of that district.

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although the point was not actually before them, they were of opinion that a regular suit to enforce registration, the party having neglected to pursue the steps laid down in section 84 of Act XX. of 1866, would not lie. Under the former Act, Act XVI. of 1864, and under section 15 of that Act, if a District Registrar or a Deputy Registrar refused to register an instrument, it was lawful for any person interested to institute a regular suit to establish his right to have such instrument registered; but the provisions of this section of the older law are omitted in the later law, namely Act XX. of 1866, and from the report of the Select Committee of the Council of Governor General of India (1). Upon the later law, it is clear that the Legislature intentionally abolished the regular suit which, under section 15 of the former law, a party whose deed the Registrar had refused to register could bring to establish his right to have such instrument registered, for in paragraph 16 of the report of the said Committee the following passage occurs: "Sections 82, 83, and 84 made plainer the remedy for refusing to register; section 83 abolishes the proposed regular suit, and substitutes an application to the Court by a petition." From this it is clear that in the first draft of Act XX. of 1866 it was proposed to make it lawful for any person interested to institute a regular suit, and this privilege was, therefore, intentionally withdrawn when the bill was passing through the Select Committee.

In the present case, the plaintiff having neglected to avail himself of the remedy which the law gave him under section 84, he

(1) See *Donegall v. Layard*, 8 H. of L. Ca., 465. In that case the question was as to the application of 12 and 13 Vict. c. 105 (Ir) It was stated by counsel in argument, that the Master of the Rolls (in Ireland) had examined the various clauses of the private Acts and of the Statute and also referred, in support of his opinion, to the amendments which had been introduced into them as they went through committee. The Lord Chancellor remarked: "His Honor ought to have confined himself to what appeared on the Statute Book." And in his judgment, the Lord Chancellor, again referring to this, said: "I need hardly observe that along with the whole profession of the law in Ireland and in England, and with the public at large, I sincerely entertain the highest respect for that distinguished Judge, the present Master of the Rolls in Ireland. But I must lament that his zeal to do justice has led him in to inquiries respecting this Act of Parliament which could not legitimately assist him in construing it, and which, I think unfortunately induced him to change the sound construction which he had twice before put upon it." The other Lords concurred.

has only himself to blame. We may also observe that, as remarked by the learned Chief Justice in the decision of the Full Bench above alluded to, a purchaser or lessee, as the present plaintiff is, can always protect himself, and if he does not, it is his own fault: he should take care before he pays his purchase-money, or as in this instrument, advances money on a zurpeshgi lease, to get the deed registered or to obtain an authenticated power of attorney from the vendor or lessor, authorising some one in whom the purchaser or lessee has confidence to register the deed or lease as agent of the vendor or lessor.

We are, therefore, of opinion that the Judge was right in law in holding that the suit of the plaintiff would not lie.

We dismiss the special appeal with costs bearing interest.

E. JACKSON, J.—In the decision (1) which I recorded on the occasion of the former suit which has been referred to by my learned colleague, and which was subsequently decided by a Full Bench of this Court, I stated my opinion that the right to bring a separate suit to enforce registration had not been taken away by Act XX. of 1866.

The Judges who decided the Full Bench suit have nearly all stated their opinion that that power to bring a suit no longer exists, and therefore I do not press that opinion any longer. In addition to that, it would appear very distinctly, from what we have since elicited on examination of the report of the Select Committee of the Legislature which passed the law, that the Legislature did intend to abolish and did abolish in fact the power to bring a separate suit. In the draft Act, which was originally published, there was a distinct section which stated that a person who had failed in obtaining registry could bring a regular suit, and it was distinctly declared in that section that for the purposes of that suit the unregistered deed might be received in evidence. The Select Committee deliberately altered that section, and substituted in its place the procedure by petition. I think it would have been better, had it been distinctly stated in the Act that the power to bring a suit was abolished. I think that

(1) 1 B. L. R. (F. B.), 60.

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many people may be misled by its not having been so distinctly stated ; I think that the plaintiff in this case has certainly been misled by it. However that may be, as it is for this Court to carry out the law as it has been passed, if the plaintiff has made a mistake, the Court cannot assist him. The plaintiff's remedy was by petition to the Judge, and not by a civil suit.

The civil suit must therefore be dismissed.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter

IN THE MATTER OF J. HOLLICK AND OTHERS.*

Attachment of Salaries of Railway Servants—Jurisdiction of Mofussil Small Cause Courts—Procedure—Act VIII. of 1859, ss. 236, 239, and 240.

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Salaries or other debts due from the Railway Company to any of its servants can be attached in satisfaction of a Small Cause Court decree under Act VIII. of 1859, section 236.

The attaching Court must make a written order to be fixed up in some conspicuous part of the Court-house, and a copy is to be delivered or sent registered by post to the debtor. The registered letter should be addressed to the agent of the Railway Company at the Head Office of the Company. It need not be sent through the High Court, although the Head Office is within the jurisdiction of the High Court.

Act. IV
of 1882, Sec
266.

CERTAIN money decrees having been obtained in the Small Cause Court at Monghyr, against some of the East Indian Railway Company's servants, in execution of one of the decrees, the Judge wrote to the Chief Paymaster, E. I. R. Co., at Calcutta, requesting him to attach and remit to his Court the amount of the decree from pay or any money due to the judgment-debtor. The Railway Company replied that they could only recognize an attachment issuing from the High Court :

Thereupon the Judge of the Small Cause Court submitted the following questions for the opinion of the High Court :

1st.—Whether the salaries of the Railway servants can be attached and deducted in satisfaction of Civil Courts decrees ?

2nd.—Is there any necessity for this Court to make the High Court, or any other Court, a medium in exercising the powers of attachment and deduction of salaries of judgment-debtors belonging to the Railway or any other department ?

* Reference to the High Court by the Judge of the Small Cause Court at Monghyr.