

make this reference on the two points already mentioned, and I would further ask the opinion of their Lordships :

“ 3. Whether, supposing it to be impossible to affect a service of summons on a defendant residing at Mandalay through the Post Office, it can be done by a special bailiff ?

“ Section 47 seems to me to preclude this. No Officer of the Court can execute process without the jurisdiction of the Court, *Sagore Dut v. Ramchandra Mitter* (1); much less I should suppose can the Court give authority to do so to a person not an officer of the Court.

“ It has been the custom in Rangoon to send process up to Mandalay by special bailiff; but I do not think the practice is warranted by the law. The late learned Recorder held, it seems, a different opinion from my own on the point, and I would, therefore, desire to refer it to their Lordships.”

The opinion of the learned Judges, upon the questions submitted to them, was delivered as follows by

PEACOCK, C. J.—We are of opinion, 1st, that a summons cannot be sent by post to any place to which letters are not registered by a Post Office; and, 2nd, that a special bailiff cannot be sent to serve civil process in a Foreign Territory.

Before Mr. Justice Loch and Mr. Justice Glover.

INDRA CHANDRA DOGAR, PLAINTIFF, v. TARACHAND
DOGAR, DEFENDANT *

Execution—Insolvency—Attaching Creditor—Official Assignee—Priority.

A. obtained a decree against B., and in execution, attached property of B. in Zilla Dinagepore, in January 1868, and it was sold on the 19th March. In the meanwhile, B. had been adjudicated an insolvent, and the usual vesting order was made by the Insolvent Court on 6th March. Notice of this order reached the Judge of Dinagepore not until after the sale, but before the sale had been confirmed and the proceeds had been handed over. Held, the official Assignee was entitled to the proceeds of the sale.

Baboo *Krishna Kishor Ghose* and *Khetramohan Mookerjee* for petitioner.

* Summary Special Appeal, No 319 of 1868, from an order passed by the Officiating Judge of Dinagepore, dated the 24th April 1868.

(1) 1 Hyde, 136.

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KASIM AJIM
DU LAY
v.
KASIM
MOHAMMED
BARACHA.

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Mr. *R. E. Twidale* and Baboo *Taraknath Dutt* for the
 Official Assignee.

INDRA CHAN-
 DRA DUGAL

v.
 TARACHAND
 DUGAL.

The facts are sufficiently set forth in the judgment, which was delivered by

LOCH, J.—The appellant in this case, in execution of his decree, attached the property of his judgment-debtor, situated in Zilla Dinagepore, in January 1868, and it was sold in execution on the 19th March 1868. On the 6th March the debtor was declared insolvent, and by an order of the Insolvent Court of that date his property was vested in the Official Assignee. On the 19th March the Official Assignee sent a petition to the Judge of Dinagepore, praying that the property might be released from attachment, and that any assets belonging to the insolvent might be remitted to him. The petition of the Official Assignee did not reach the Judge till after the sale of the insolvent's property had taken place; and after the expiry of the thirty days prescribed by law, the Judge confirmed the sale, and remitted the sale proceeds to the Official Assignee. The decree-holder claims these sale proceeds, on the ground that, as the property had been attached by him in execution of his decree before it was vested in the Official Assignee, he is entitled to the sale proceeds; and he supports his claim by reference to a Circular Order of the late Sudder Court of 25th August 1837, circulating an opinion of the then Advocate-General on the subject.

There has been a great change in the law since 1837, and certain judgments passed by Judges on the Original Side of the High Court in *Rampersad v. Calachand Das* (1), have been quoted by the opposite party, to show that attachments made before judgment, though perfected by judgments, and not requiring fresh proceedings of attachment to be taken out, do not prevent possession of the attached property from being taken by the Official Assignee, should it not have been sold before that officer is appointed to the charge of the property. It is pointed out to us that the High Court of Bombay

(1) 1 L. J. N. S., 325 & 373.

have ruled differently in *Gamble v. Bholagir* (1) and have held that when property has been attached before judgment, and a decree obtained before the Official Assignee was appointed, the attaching creditors were entitled to be satisfied before the Official Assignee; but, though all deference is due to the opinion of the High Court of Bombay, we think the ruling of this High Court should be followed till it be shown to be erroneous.

As the attachment does not divest the debtor of the ownership on the property, we think that attachment after decree does not put a creditor in a better position than attachment previous to judgment; and we, therefore, consider the order of the Judge is correct, and dismiss the appeal with costs.

Before Mr. Justice Loch and Mr. Justice Mitter.

ABDUL AZIM, PLAINTIFF, v. KHONDKAR HAMED ALI, DEFENDANT *

Pre-emption on ground of Vicinage—Mohammedan Law.

The right of pre-emption, on ground of vicinage, is limited to parcels of land and houses, and does not extend to the purchase of an entire estate, even though it be entirely surrounded by the lands of the would-be pre-emptor.

PLAINTIFF sued to enforce a right of pre-emption and to obtain possession of a certain small talook sold to defendant by its former owner, which lay almost surrounded by plaintiff's estate. The first Court found that plaintiff had performed all the formalities of pre-emption, and gave him a decree.

On appeal, the Judge held, that, as plaintiff sued on a right of vicinage alone, he could not claim pre-emption over so large a piece of land as the talook in dispute, which might contain from 80 to 200 gasas. *Ejnash Koer v. Sheikh Amzudally* (2).

Plaintiff appealed specially, urging that the doctrine laid down in the case cited, only applied to large estates and principalities, and that it was opposed at any rate to Mohammedan Law.

* Special Appeal, No. 1320 of 1868, from a decree of the Judge of Sylhet, reversing a decree of the Officiating Principal Sudder Ameen of that District.

(1) 2 Bombay H. C. R., 150.

(2) 2 W. R., 261

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INDRA CHAN-
DRA DOGAR.
v.
TARACHAND
DOKAR.

1868
Sept. 14.