

“hell” (1), but no mention is made of secular interference, or of an appeal to the king on behalf of the family. And this is the more remarkable, as in many other cases a distinct temporal penalty is prescribed, and if the non-performance of the duty of maintaining those who were excluded from inheritance, had been a wrong punishable by law, doubtless the fact would have been so stated instead of that the offender is left to receive his punishment in the other world.

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DAS.

The case of *Khudeemani Debia v. Tarachand Chuckerbutty* (2) did not (as appears to be supposed) decide the widow's right to maintenance from her father-in-law. That point had already been decided by the lower Courts, and the only question before the High Court in special appeal, was whether the widow could demand that maintenance without living with her husband's family,—a question which there is now no necessity for deciding.

I would dismiss this appeal with costs.

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

KASIM AJIM DUPLAY, PLAINTIFF, v. KASIM MOHAMMED
BARACHA, DEFENDANT.*

Act VIII. of 1859, ss. 60 and 66—Service of Summons by Post—Service in Foreign Territories.

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A summons cannot be sent by post to any place to which letters are not registered by a Post Office.

A special bailiff cannot be sent to serve civil process in a Foreign Territory.

See also Act
XIV of 1882
Sec. 85-88.
89-90.

This was a reference from the Recorder of Rangoon, under section 22 of Act XXI. of 1863, for the opinion of the Judges of the High Court, upon the questions stated as follows :

“1. Whether a summons, to appear and answer to a suit in the Court of the Recorder of Rangoon, can be served upon a defendant residing at Mandalay, in the territories of the king of Ava, through the Post Office, under section 60 of Act VIII. of 1859? And if so,

“2. Whether proof of the letter having been duly posted is sufficient *prima facie* proof of service of the summons?

(1) Dayabhaga, Ch. II., Sec. 23.

(2) 2 W. R., 134.

* Reference by the Recorder of Rangoon.

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“ The following evidence taken in the case will show the nature of the communication by post between Rangoon and Mandalay :

“ *August 5th and 7th of 1868.*—R. S. E. sworn, states: ‘ I am Collector of Customs of Rangoon. There is a dawk post between this place and Mandalay, and there has been such a post for several years. The post belongs to the King of Ava. The packets are always brought to me, and I give them to the head boatman. For the last year or two, this communication has been regular once a week. I have never had any complaint of a missing letter. There is a small box in the Custom House, and the people come and put the letters in, of their own accord: It is a safe mode of communication. Most important letters go by the boat. The communications between the Burmese Court and the Chief Commissioner of British Burma goes that way. The King of Ava maintains this dawk boat.’ *To the Court.*— ‘ The late Chief Commissioner authorized me to take charge of the mails for Ava. He did not give me an authority in writing. It was an arrangement made when I was up at Amarapura, with the late Chief Commissioner. It was not inserted in the Gazette, and had nothing to do with the Post Office. The Post Office authorities occasionally send letters posted for Mandalay : over to me for transmission.’

“ A. C. Boyd sworn : ‘ I am Post-master of Rangoon. Letters are posted for Mandalay in the Post Office. We send them over to the Collector of Customs after they are stamped. We do not register letters for Mandalay. There is no branch of the Post Office at Mandalay, or anywhere in the territories of the King of Ava.’

“ I would state, as my own opinion, that I have some doubt upon the first question, that is to say, whether the summons can be served through the post. Section 60 does not define the word “ post,” and it may be that the post between Rangoon and Mandalay would come within the meaning of the section ; but on the second question, I apprehend, that there is no doubt that mere proof of the posting of the letter without proof of registration cannot constitute *prima facie* proof of service of the summons under section 66.

“ I have been requested by the Advocate for the plaintiff, to

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
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BARACHA.

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