[62] *ECCLESIASTICAL SIDE.*

IN THE GOODS OF PATTAULUM CUSTOORY RUNGIAH.

(*February 3rd, April 8th*, 1801).

A debt due to the estate of a deceased considered as *bona notabilia*, in the place where the person of the debtor happened to be in custody.

MR. ORME, on behalf of *Kistniah* Braminy, son to the deceased, had formerly applied to me in Chambers for letters of administration in this case, the circumstances of which, as now adverted to by him, were as follows:

The deceased had died an inhabitant of *Trichinopoly*, leaving a family surviving him residing at *Trichinopoly*, where his property also was situated. The estate had a demand upon a person of the name of *Canniah*, also an inhabitant of *Trichinopoly*, but who happened at this time to be in the custody of this Court at Madras, upon process in a civil action; and the object of *Mr. Orme's* client was to qualify himself to sue *Canniah*, being within the local jurisdiction, on behalf of the family, for the amount.

Nothing having been done by me upon the application at Chambers, affidavits of persons from *Trichinopoly* were now produced, to shew that the application ought not to be granted.

The Court considered the debtor's person in custody as constituting *bona notabilia* at the Presidency, so as to give a jurisdiction to grant administration *pro tanto;* and that the only question would be, as to the competency of the person applying to receive it. It was observed to be a great trust, as it vested the property, which might be to any amount; and that the Court therefore could not be too careful in ascertaining the person to whom it was to be com-
[63] mitted. That, in the ordinary case, the advertisement, provided for by the Rule on the Ecclesiastical side, circulating in Madras and its environs, gave a publicity which, unless special means were adopted, would not exist in the present, in which the family, friends, and creditors of the deceased lived at a distance. That it would be therefore proper to direct the Registrar to write to some public functionary at *Trichinopoly* on the occasion, enclosing him the form of a proper advertisement and requesting him, by desire of the Court, to publish it throughout that place, and its vicinity, by *tomtom*, or in any other customary and sufficient manner, so as to give an opportunity to parties interested to apply to the Court on the subject. Upon these terms, leave was given, if no cause was shewn to the contrary within a month, to take out letters.

The Supreme Court has since refused applications of this nature, under similar circumstances (a).

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[63] (a) See in the matter of the Will of *Taral*, post.

CROWN SIDE.

IN THE MATTER OF GOVINDO LALLA. [*4th February*, 10*th August* 1801].

Goods, the property of a *felo de se*, forfeited to the Crown, were delivered over to the Company as it's grantee.

MR. COMPTON, as Coroner, delivered in an inquest taken before him on the body of Govindo Ram Lalla, a sowcar from *Masulipatam*, upon the 28th *January* last; by which he had been found *felo de se*, with a schedule subjoined of bags of money, jewels, and other property, belonging to the deceased, and cer-**[64]**tified by the coroner to be then in his possession, upon which he prayed the direction of the Court. The deceased had been about two months at Madras, before the fatal act took place; but was understood to be a stranger there, of whom no one knew anything. The property was stated to be contained in a box, which had been sealed up in the presence of the jury.

The *Recorder* observed, that it would be best to deliver the whole into the custody of the officer of the Court, in trust for whoever might appear to be entitled to it, and called the attention of *Mr. Williams*, the Company's Solicitor, then in Court, to the nature of the case; —that by the law of England the goods and chattels for the *felo de se* were forfeited to the King (a), for whose security it directed the coroner, in a case like the present, to deliver them over to the township, to be answerable for them to the Crown. That perhaps the common law had been rigorous in this respect, and it certainly not being in modern times the spirit of the Government of England to heap misery upon misery, he believed the practice of the Crown in such a case now was to consider itself as a trustee, first for creditors, and then for the next of kin of the deceased;—that the Company here stood for this purpose in the place of the King; and that it would be fit to preserve the property to be forthcoming; and there being nothing here analogous to the township at home, the best course would be to deposit the property with the Court, subject to its order. The Court accord-**[65]**ingly directed the coroner to deliver it over, and the proper officer to receive and take charge of it.

The property was finally, by order of Court, delivered over to *Mr. R. Williams*, as Solicitor to the Company, on behalf of the Company.

Whether an escheat of this nature passes to the Company, under that part of the Charter, which grants to it fines, amercements, forfeitures, etc.? Qu.

ECCLESIASTICAL SIDE.

IN THE GOODS OF CUTTUMBAUKUM MOOTOO MOODELIAR.

CUTTUMBAUKUM CHINGLEROY MOODELIAR, *Proponent*; ANNAVA VENCATACHELLA AND MANNAVAUKUM COMAROO MOODELIAR, *Opponents*.

(*9th February*, 1801.)

Reference of allegations for scandal and impertinence on the Ecclesiastical side. Qu.

MR. COMPTON moved to refer the allegations that had been filed in this case, to the Master, for irrelevance and scandal. He agreed this was not the course of the Ecclesiastical Court, but he knew of no other; and, as it was

[64] (a) Megell *v.* Johnson, Doug. 512.

of importance to his clients that the present allegations should be reviewed, he hoped the Court would either grant his motion, or itself look into the allegations.

Mr. Anstruther, for the proponent, opposed the motion for a reference in the first instance. He observed, that references to the Master on the equity side, had been found productive of great delay and injustice to the parties; and deprecated this extension to the Ecclesiastical side of the Court. He went also into **[66]** some detail, to prove that the right was with his clients; and that there was nothing in the allegations, but what the nature of the case required.

RECORDER. The Court is not now trying the right, neither are the allegations so before it, as to enable it to judge of their relevancy. It is to bring their relevancy into judgment, that the present motion is made. If it were the settled course of this Court, to refer on the Ecclesiastical side to the Master, nothing that has fallen would restrain us from pursuing it in the present instance; because, if there are unnecessary delays in the Master's office, it must be the fault of parties themselves, who have the means of obtaining a decision of everything depending there, as soon as the nature of the enquiry will admit: and, if the Master err, a reference to the Court is always open to review and correct.

An instance, it seems, has occurred (of which the Master has been shewing me a note) of a reference to him on the Ecclesiastical side; it was of a matter of evidence; not that that makes any difference; the principle is the same; but that was by consent, and the Court should certainly pause before it establishes a course not pertinent to the jurisdiction in which it is sitting. The Court therefore refer it to *Mr. Compton* to look into *Consent*, and other books of Ecclesiastical law and practice, and see what the course is there; for a course there must be, as no Court will suffer it's records to be improperly filled.

The matter was not brought again before the Court.

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[67] *PLEA SIDE.*

SINGANA CHITTY, ADMINISTRATOR, etc. *v.* PUDDAMANABADOO CHITTY. [12*th February*, 1801.]

No other way of enforcing a recognizance, but by action, or *scire facias*.

Appeal to the King in Council against refusal by the Mayor's Court to compel a witness to be examined at the pagoda. dismissed for want of prosecution.

THIS had been a suit in the Mayor's Court. Issue having been joined, an application was made in that Court to examine a particular witness at the pagoda; which being refused, there was an appeal, first to the Governor in Council. and then home, which was dismissed by the King in Council (22nd April 1796) for want of prosecution, with £50 costs. The general practice of the Mayor's Court had been to compel the unsuccessful party to pay the whole costs incurred by the appeal. In this case, on the application for leave to appeal, a recognizance had been entered into by two persons, to whom it stated that the appellant had been "admitted to bail, to answer such costs "and charges as should be adjudged by His Majesty in Council, in a certain "cause, etc., etc."