

dispute, and that is a question directly relating to the execution of the decree.

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February 8.  
S. A. No. 104  
of 1869.

This view of the application of the section is strengthened by a reference to Sections 227, 229 and 230 of Act VIII of 1859. They shew that a question as to the alleged seizure in execution of property to which the decree did not relate was one summarily determinable in the course of execution when Act XXIII of 1861 was passed as a question relating to the execution of the decree, and nothing occurs to us as a reason why the parties to the suit should not have been restricted to a proceeding in execution for the determination of such questions. The restriction works no prejudice to the parties. They are entitled to have the question fully tried, and the order made is subject to the same rights of appeal as a decree.

For these reasons our judgment is that the suit did not lie. The decree appealed from must therefore be reversed with costs and the suit dismissed. The plaintiff must seek redress by an application under Section 11 of Act XXIII of 1861 if that course should still be open to him.

*Appeal allowed.*

### Appellate Jurisdiction. (a)

*Referred Case No. 5 of 1870.*

KONDASAWMY PILLAY *against* KRISTNASAWMY PILLAY.

A person executing a process directing a general attachment of moveable property, having gained access to a house, has a right to remove the lock from the door of a room in which he has reasonable ground for believing moveable property to be lodged.

THE following case was stated under Section 22, Act XI of 1865, by P. Sawmy Iyer, the District Munsif, Trivalore, in Suit No. 163 of 1869.

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of 1870.

In this case the plaintiff applied for a general attachment of the defendant's moveable property under Section 214 of the Civil Code, obtained an order for the same, and the usual process of attachment was issued. But the Batta Amin who was to take property under attachment reports to me that no personal property was forthcoming in that

(a) Present: Holloway and Collett, JJ.

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part of the defendant's house which was open without being shut or locked up; that one of the rooms of the house, *i.e.*, one facing to the east has been locked up, wherein, plaintiff says property has been kept by the defendant; but that defendant refuses to open that room, and the Amin wants my instructions as to the measure hereafter to be taken in the matter.

2. A general attachment of moveable property applied for and granted under Section 214 of the Civil Code warranting the attachment of moveable "wheresoever the same can be found," I thought that the Batta Amin was perfectly at liberty to break open the room in question which has been intentionally locked up by the defendant as above detailed in order to evade the lawful payment due to the plaintiff under the decree in the suit. It is very natural with many of the ordinary and unprincipled debtors to procrastinate and evade such payments as much as it might be possible for them, and if a lock avowedly stuck up by such debtors to their warerooms or homes were to paralyze the power of the Amin to attach property—wheresoever the same can be found—then every debtor will lose no opportunity to follow that example and that part of the Law which provides for the attachment and sale of the debtor's moveable property would have been virtually repealed or actually defeated. If a debtor were to stand on the gate of any room containing moveable property and opposed the attachment of the same without shutting up the door or locking it up, the Amin would have had no doubts as to his authority to enter the said room, but what is the difference between the defendant's person standing at the gate and his own lock stuck up to the door? I see none. If otherwise, it would be at the mercy of the debtor, himself either to sanction or decline an attachment of his own moveables and the authority of the Court is to give away to the debtor's mercy. I am of opinion that such locks might be broken open by Amins in order to take moveable property, wheresoever the same can be found in the words of the Section 214 of the Civil Code. On a former occasion when a somewhat similar report was made to me on very urgent circumstances, I ordered the breaking open of the house locked up by the defen-

daut, property was attached and sold and everything was right. But this being a recurrence of a similar report on a similar matter and in the absence of any precedent on the subject, I declined to pass an unconditional order for breaking open the defendant's room, but that the room will be watched over by the Amiu by his putting in another lock of his to the said room so that any property may not be removed therefrom and that the room in question will be broken open contingent upon the order of the Honorable the Chief Justice and Judge of the High Court in this matter.

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3. The question submitted for the decision of the Court is "whether houses and rooms, &c. locked up by the debtors or their representatives may be broken open for the purpose of taking moveable property for attachment in satisfaction of the decrees of the Courts, under Section 214 of the Civil Code."

The Court delivered the following

JUDGMENT:—We are clearly of opinion that a person executing a process directing a general attachment of moveable property having gained access to a house has a right to remove the lock from the door of a room in which he has reasonable ground for supposing moveable property to be lodged.

### Appellate Jurisdiction. (a)

*Referred Case No. 8 of 1870.*

JANAKIAMMAL *against* VITHENADIEN and 2 others.

A suit to establish the plaintiff's right to the exclusive possession of personal property of which the plaintiff and her husband had been dispossessed by actual seizure in execution of a decree against the plaintiff's husband is cognizable by a Small Cause Court.

THIS was a case referred for the opinion of the High Court by T. Ganapathy Iyer, the District Munsif of Tranquebar in Suit No. 282 of 1869.

1870.  
February 14.  
R. C. No. 8  
of 1870.

The facts of the case are as follow:—

Plaintiff's husband Naranappien owed defendants a judgment debt.

(a) Present: Scotland, C. J. and Innes, J.