

declaring that he is not liable to pay rent to the defendant. I do not think the declaration ought to go further; nor will any direction be given as to the refund, which is probably a matter of small amount. The plaintiff will get his costs in this Court and the Court below.

1878
MUTHORA
NATH PAL
v.
CHUNDER-
MONEY DABIA

PRINSEP, J.—Understanding the opinion of the majority of the Full Bench in the judgment delivered by Sir R. Couch, Chief Justice, in the case of *Syud Emam Momtazuddeen Mahomed v. Rajcoomar Doss* (1) to be, that when a mortgagee puts up mortgaged property to sale in execution of a decree “he sells the entire interest that he and the mortgagor could jointly sell,” and not merely the right and interest of the mortgagor as they stood at the time of the sale, and, feeling bound by that opinion, I agree in allowing the plaintiff’s claim in the present suit as against the third party Chundermoney who bought the rights of the mortgagor subject to the mortgage.

Appeal allowed.

Before Mr. Justice Jackson and Mr. Justice McDonell.

BADAN BEBAJEA (DECREE-HOLDER) v. KALA CHAND BEBAJEA
(JUDGMENT-DEBTOR).*

1879
March 24.

Execution of Decree of Small Cause Court—Act X of 1877, s. 648.

A decree of a Small Cause Court can be executed by it at any place within the local limits of the District Court to which it is subordinate as defined by s. 2 of Act X of 1877 without having recourse to the procedure under s. 648 of Act X of 1877, which applies only to cases in which a decree passed in one district has to be executed in another district.

THE facts of this case sufficiently appear from the order of reference, which was as follows:—

The judgment-debtor, who was a resident of this place when the suit was instituted, is no longer here, and the decree-holder

(1) 23 W. R., 187.

* Small Cause Court Reference, No. 356 of 1879, from an order made by W. H. Verner, Esq., Officiating Judge of Backergunge, dated Barrisal, the 17th December 1878.

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prays that the debtor, who now lives at Dhulia in the sub-district of Palna-khali in the District of Backergunge, may be arrested under a process of this Court. The man now lives beyond the jurisdiction of this Court, but within this district. He relies upon s. 648 of the present Procedure Code, the provisions of which as to arrest are made applicable to Small Cause Courts by the second schedule.

The section is thus worded :—“ If any person to be arrested resides outside the district within which the Court issuing the warrant of arrest is situate, such Court shall send to the District Court, within the local limits of whose jurisdiction such persons resides, a copy of the warrant, &c., &c.” The hitch lies in the word ‘ district,’ which is defined in the Code (s. 2) to mean “ the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a District Court).” In other words, it means the local limits of a District Judge’s Court. In that sense the judgment-debtor to be arrested does not reside outside the district within which the Court issuing the warrant, namely, this Court, is situate. This Court is situate within the same district (Backergunge) that the person to be arrested still resides in. In this view of the question, of course the prayer cannot be granted. But the result of such an interpretation would seem to be very curious; for, if the man were to reside in any other district (Furrirdpore, Jessore, Dacca, &c.), there can be no doubt that I could have him arrested through the District Judge of that district, whereas as he happens to live in this district, but beyond my local jurisdiction, the most effectual process issuable from this Court, namely, a writ of arrest, cannot be issued against him. Such a result could hardly be contemplated by the legislature, specially when it extended the jurisdiction of the Small Cause Courts by enacting s. 17 and repealing s. 8 of Act XI of 1865. I am, therefore, inclined to interpret the word “ district” in some other way, and there is room for it left by s. 2 itself. That section begins with—“ In this Act unless there be something repugnant in the subject or context. Now the definition of the word ‘ district’ in the Code seems to me to be repugnant to the subject of s. 648. The word should, therefore, be held to

mean 'the local limits of the jurisdiction of the Court issuing the writ.'" This meaning would not be opposed to the context, for though the word 'within' has been used, there can be no doubt that under this section one District Court may send a writ to another.

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The question submitted to the Honorable High Court for authoritative determination is whether I can legally send a writ of arrest to the District Judge of this district for execution at Dhulia in this case.

The order of the Court was delivered by

JACKSON, J.—It appears to us that this case should have been dealt with under chap. xix, and that s. 648 has no reference to it.

Before Mr. Justice Ainslie and Mr. Justice Broughton.

ELAHI BUKSH (PLAINTIFF) v. MARACHOW AND OTHERS (DEFENDANTS)*

1879
 Feb. 19.

Suit under Act VIII of 1859—Decree given after repeal of Act VIII of 1859—Appeal—Act X of 1877, s. 3.

Where a suit has been instituted under Act VIII of 1859, but decided at a time when Act X of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of Act X of 1877 distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal.

Where, therefore, an appeal presented when Act X of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its readmission under s. 558; and if such readmission is refused, he is entitled to an appeal under s. 588 (v).

Burkut Hossein v. Majidoonissa (1) distinguished.

ONE Elahi Buksh instituted a suit against a person named Marachow and others to recover possession of certain lands from which he had been dispossessed on the 1st September 1877,

* Appeal from Original Order, No. 211 of 1878, against the order of A. C. Brett, Esq., Judge of Shahabad, dated the 22nd of June 1878.