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NILMONCY
SINGH DEO
v.
BANESHUR.

ous, and must be set aside without costs, as the appellant does not apply for them. This judgment will apply to appeals Nos. 1116 and 1117 of 1877.

Appeal decreed.

Before Mr. Justice Markby and Mr. Justice Prinsep.

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June 20

IN THE MATTER OF ABDOOL HAMED.*

Insolvency—Jurisdiction of District Court of Akyab under Act X of 1877, chap. xx—Burma Courts Act (XVII of 1875), ss. 31, 66.

The Deputy Commissioner of Akyab, sitting as District Judge, has power to entertain applications under chap. xx of Act X of 1877.

Section 6 (d) of that Act interposes no obstacle in the way of the Deputy Commissioner dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the Recorder of Rangoon sitting as an Insolvent Court in Akyab" within the meaning of that section.

CASE referred to the High Court by the Judicial Commissioner of British Burma under s. 31 of the Burma Courts Act (Act XVII of 1875).

It appeared that one Abdool Hamed, who was a prisoner in the civil jail of Akyab under an order of the Judge of the District Court of Akyab, made an application to the Deputy Commissioner of Akyab, as District Judge, to be declared an insolvent under s. 351 of Act X of 1877. The application was objected to by some of his creditors. The Deputy Commissioner, doubting whether he had jurisdiction to decide the matter, referred the following question, amongst others, to the High Court, *viz.* : Whether the District Court of Akyab has any jurisdiction, and if so, a concurrent jurisdiction within the town of Akyab under chap. xx of Act X of 1877; or whether the Recorder has an exclusive insolvency jurisdiction within that town under 11 and 12 Vict., c. 21.

No one appearing to argue the point, the opinion of the High Court (so far as regards the question, the subject of this report), was given by

* Reference, No. 701 of 1878, from an order made by John Jardine, Esq., Judicial Commissioner, British Burma, dated the 11th May 1878.

MARKBY, J. (who, after stating the facts as given above, continued).—The only objection to the jurisdiction of the Deputy Commissioner with which we have to deal upon the present reference is that arising out of s. 66 of the Burma Courts Act and ss. 4 and 6 of the Civil Procedure Code. Section 66 of the Burma Courts Act provides, that, within the towns of Rangoon, Moulmein, Akyab, and Bassein, the Recorder shall have and exercise such powers and authorities with respect to insolvent-debtors and their creditors as are for the time being exercisable with respect to insolvent-debtors and their creditors by the High Court or a Judge thereof in Calcutta. Section 4 of the Code of Civil Procedure provides, that “nothing in the Code shall be deemed to affect the Burma Courts Act, 1875. Section 6 of the Code of Civil Procedure provides, that nothing in the Code ‘affects’ the jurisdiction or procedure of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon, Moulmein, Akyab or Bassein.” Section 344 of the Code of Civil Procedure, under which this application was made, provides, that “any person arrested or imprisoned in execution of a decree for money, may apply in writing to be declared an insolvent. Such application shall be made to the District Court which ordered his arrest or imprisonment, or when the District Court did not make such order, then to the District Court to which the Court that made the order is subordinate.” These being the provisions of the law, we have no doubt that the Deputy Commissioner had jurisdiction to entertain this application.

We consider that the provisions of s. 6 of the Code of Civil Procedure do not interpose any obstacle in the way of the Deputy Commissioner dealing with this application. His doing so will not, in our opinion, affect the jurisdiction of the Recorder within the meaning of that section. It may be that if this same Abdool Hamed should ever be declared an insolvent by the Recorder, that the Deputy Commissioner would be bound to suspend further proceedings. But until that event happens, there appears to us to be no reason why the Deputy Commissioner should not proceed to the exercise of the powers conferred upon him by chap. xx of the Code of Civil Procedure

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with reference to this person. To hold the contrary would be a manifest hardship. We understand from the observations of the Deputy Commissioner, that the Recorder never sits as an Insolvent Court at Akyab; and prisoners, therefore, in the civil jail in Akyab, if they cannot apply to the Deputy Commissioner, are in a worse position than other prisoners for debt under the new Code. The result would, in fact, be, that they would always have to stay out their full time in jail, an application to the Recorder sitting at Rangoon being practically impossible.

The decision of the Bombay Court in *Bombay Crown Cases*, vol. vii, p. 6, referred to by the Judicial Commissioner, turns upon the construction of the words "in any way affect" as used in the 24 and 25 Vict., c. 67, s. 42. Words of this kind must be construed with reference to the general provisions of the Act of which they form a part. The decision of the Bombay Court can scarcely, therefore, throw any light upon the construction of Act X of 1877.

FULL BENCH.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Jackson, Mr. Justice Markby, Mr. Justice Ainslie, and Mr. Justice Miller.

GUNI MAHOMED (DEFENDANT) v. MORAN (PLAINTIFF).*

AND

DOORGA PROSHAD MYTSE AND ANOTHER (DEFENDANTS) v. JOY-NARAIN HAZRA (PLAINTIFF).†

Co-Sharers of Land—Arrangement for separate Payment of Rent—Separate Suits for Arrears of Rent—Evidence of Arrangement—Suit for Kabuliat—Cancellation of Original Lease, Presumption as to—Enhancement—Beng. Act VIII of 1869, ss. 2, 20.

Where it has been arranged between the co-sharers of an estate and their tenant, that he shall pay each co-sharer his proportionate share of the entire rent, each co-sharer may bring a separate suit against the tenant for such proportionate share.

* Appeal under s. 15 of the Letters Patent against the decree of Mr. Justice White, dated the 3rd July 1877, made in Special Appeal No. 1713 of 1876.

† Appeal under s. 15 of the Letters Patent against the decree of Mr. Justice Prinsep, dated the 5th July 1877, made in Special Appeal No. 2601 of 1876.

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