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had previous cognisance of the question, as raised in an appeal of *Radha Raman Shaha v. Pran Nath Roy* (1) on identically the same ground, that this is a case generically different from any which was or indeed could be determined under ss. 108 and 311 of the Civil Procedure Code. Those sections limit the attention of the tribunal to specific matters, and, instead of subjecting to enquiry the radical question now involved, they assume the existence of a real suit. But here the suit itself is attacked as a fraud; and the fraudulent and violent incidents of its progress as, for instance, at the stage of service and in the abduction of the respondent, while they may individually have founded an application under ss. 108 and 311, are here treated as parts and *indicia* of a whole.

As the matter must go for trial and the investigation of the facts, their Lordships do not think it well further to discuss the bearing of those facts as now alleged. They will humbly advise His Majesty that the appeal ought to be dismissed.

*Appeal dismissed.*

Solicitor for the appellants: *W. W. Bow.*

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(1) (1901) I. L. R. 28 Calc. 475.

## APPELLATE CIVIL.

*Before Mr. Justice Pratt and Mr. Justice Geidt.*

1902  
 May 1.

RATAN MAHANTI

v.

KHATOO SAHOO.\*

*Jurisdiction—Foreign Court—Decree, execution of—Civil Procedure Code (Act XIV of 1882) ss. 223, 224, 229 (A) and 229 (B)—British Courts in India, power of, to send their decrees for execution to Foreign Courts.*

The Tributary Mahals of Orissa do not form part of British India; therefore, in the absence of a prior notification in the *India Gazette* as specified in ss. 229 (A) and 229 (B) of the Civil Procedure Code, no decree by a Court in British India can

\* Civil Rule No. 500 of 1902.

be sent for execution into a territory such as Mayoorbhunj, which is a Tributary Mahal.

*Kastur Chand Gujar v. Parska Mahar* (1) referred to.

The judgment-debtor Khatoo Sahoo obtained from the High Court this Rule.

The plaintiffs Ratan Mahanti and others obtained a decree for a sum of Rs. 69-9 against the petitioner in the Court of Small Causes at Balasore on the 16th January 1901. The decree-holders, on the 27th September 1901, applied in the said Court for a certificate to be sent to the Court of the Raja at Killa Mayoorbhunj for the execution of the decree, alleging that the petitioner resided or had property within the local limits of the jurisdiction of the last-mentioned Court. The Court below granted the application of the decree-holder and issued a certificate under ss. 223 and 224 of the Civil Procedure Code on the 27th September 1901, and ordered that the suit be struck off the file and that a copy of the *robocari* be sent to the Raja of Killa Mayoorbhunj through the Assistant Superintendent of the Tributary Mahals at Balasore.

*Mr. J. T. Woodroffe* (the *Advocate-General*) and *Babu Harendra Nath Mookerjee* for the petitioner.

No one appeared for the opposite party.

PRATT and GEIDT JJ. Ratan Mahanti and others, holders of a decree in the Court of Small Causes at Balasore, obtained an order, dated the 27th September 1901, directing that a *robocari* be sent to the Raja of Killa Mayoorbhunj through the Assistant Superintendent of the Tributary Mahals, Balasore, with a copy of the decree and of any order which may have been passed in execution of the same and a certificate of non-satisfaction. This order purports to have been passed under ss. 223 and 224 of the Code of Civil Procedure.

The judgment-debtor has obtained this Rule calling upon the decree-holders to show cause why the order complained of should not be set aside. No cause has been shown. It appears that this Court has on more than one occasion decided that the Tributary Mahals of Orissa, of which Mayoorbhunj is one, do not form part of

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British India; and this ruling has been accepted by the Secretary of State for India in Council, as appears from p. 119 of Vol. I of Mr. Aitchison's work entitled "A Collection of Treaties, Engagements and Sanads." Under ss. 229 (A) and 229 (B) of the Code, no decree by a Court in British India can be sent for execution into a territory such as Mayoorbhunj without prior notification in the *India Gazette* as specified in these sections. No such notification appears to have been issued. The Judge of the Small Cause Court at Balasore had therefore no jurisdiction to make the orders, which he did in this case. The view we take is in accordance with that expressed in the case of *Kastur Chand Gujar v. Parsha Mahar* (1).

The Rule is accordingly made absolute, and the order complained of is set aside with costs.

*Rule made absolute.*

(1) (1887) I. L. R. 12 Bom. 230.

## ADMIRALTY JURISDICTION.

*Before Mr. Justice Harington.*

### THE "TELENA."

1901.  
Sept. 24, 25.

*Admiralty Jurisdiction—Arrest of a steam-ship, application for—Damage done "by a ship"—Maritime lien for damage—Injury caused to one ship by wrongful act of another—Ship as "Instrument of Mischief"—Action in rem—53 & 54 Vict., Ch. 27.*

To establish a maritime lien for damage against a ship, the damage must be the direct result of some unskilful or negligent conduct of those in charge of the ship which does the mischief, the ship herself being the "instrument of mischief."

The steam-ship *T.* while lying in dock discharged a large quantity of oil which, floating on the dock-water and becoming ignited, caused considerable damage to another steam-ship, *C.*, lying in the same dock. The charterers of the latter applied for the arrest of the former, alleging that they were entitled to bring an action *in rem* against the owners of the ship *T.*

The application for arrest of the ship *T.* was refused, she not being the direct cause of the damage, and the applicants not having an action *in rem* in the Admiralty Court against the owners of that ship.