

way in the 18th Century, and the validity of the alienations has never been questioned.

It appears to us that the mineral rights must be regarded as the property of the Raja. The appeal will accordingly be allowed. The plaintiff will get a decree declaring his title to the mineral rights and for an injunction restraining the defendants from working mines in Panchgachia. He will be entitled to his costs of both Courts.

S. M.

Appeal allowed.

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 JYOTI
 PRASAD
 SINGH
 v.
 LACHIPUR
 COAL
 COMPANY.

APPELLATE CIVIL.

Before Mr. Justice Coxe and Mr. Justice Teunon.

ZAMIL AHMED

v.

THE MAHARAJAH OF SIKKIM.*

1911
 July 14

Political Agent at Sikkim, Court of—Execution of Decree—Transfer of Decree for Execution—Civil Procedure Code (Act XIV of 1882) s. 229 A; (Act V of 1908) ss. 43, 45.

By the notifications of the 29th March, 1889, and 3rd October, 1907, the Governor-General in Council declared that s. 229A of the Code of Civil Procedure of 1882 (s. 45 of the Code of 1908) should apply to the Court of the Political Agent at Sikkim.

A decree obtained in the Court of the Political Agent at Sikkim and transferred for execution to a Court in British India, could therefore be executed within the jurisdiction of that Court.

APPEAL by the judgment-debtors, Zamil Ahmed and others.

On the 11th of January, 1909, the Maharajah of Sikkim obtained a decree for a certain sum of money against one Zamil Ahmed and others in the Court of the Political Agent at Sikkim. The decree-holder got the decree transferred for execution to the Court of the Subordinate Judge of Darjeeling

* Appeal from Original Order, No. 231 of 1909, against the order of F. E. Piffard, Subordinate Judge of Darjeeling, dated March 29, 1909.

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through the District Judge of Purneah. On the 26th of March, 1909, the decree-holder by an application to the learned Subordinate Judge prayed that the decree might be executed by attachment of the property of the judgment-debtors mentioned in the application. The judgment-debtors objected to the application for execution on the ground, *inter alia*, that it not being shown that the Court of the Political Agent at Sikkim was a Court established or continued by the authority of the Governor-General in Council within the meaning of section 43 of the Code of Civil Procedure of 1908, the execution could not proceed.

It appeared that by notifications on the 29th March, 1889, and 3rd of October, 1907, the Governor-General in Council declared that section 229A of the Code of Civil Procedure of 1882 (now section 45 of the Code of 1908), should apply to the Court of the Political Agent at Sikkim.

The learned Subordinate Judge overruled the objection of the judgment-debtors, and allowed execution to proceed.

Against that decision the judgment-debtors appealed to the High Court.

Babu Umakali Mukherjee and *Babu Kulwant Sahai*, for the appellants.

Babu Provas Chandra Mitter, for the respondent.

COXE AND TEUNON JJ. In this case the respondent obtained a decree in the Court of the Political Agent at Sikkim. An application was made to execute this decree in the Court of the Subordinate Judge, Darjeeling. The appellant objected to the execution; but his objection was overruled, and hence this appeal.

The first and principal point taken on his behalf is that it is not shown that the Court of the Political Agent at Sikkim is a "Court established or continued by the authority of the Governor-General in Council," within the meaning of section 43 of the Code of Civil Procedure. It appears to us, however, that this objection cannot be sustained. By reference to

the notifications of the 29th March, 1889, and 3rd October, 1907, it appears that the Governor-General in Council declared that section 229A of the Code of Civil Procedure, now section 45, should apply to that Court. This appears to us to show beyond dispute that that Court is a Court established or continued by the authority of the Governor-General in Council, because it is only to such Courts that section 45 of the Code of Civil Procedure can be applied by the Governor-General in Council.

It has been argued that although the Court may be regarded as established or continued by the authority of the Governor-General in Council for the purposes of section 45, it is not necessarily such a Court for the purposes of section 43; but, in our opinion, this view cannot be upheld. If it is a Court established or continued by the authority of the Governor-General in Council, it is immaterial for what purposes it was so established or continued.

It has also been urged that it has not been shown that the decree could not be executed within the jurisdiction of the Court of the Political Agent at Sikkim.

This, however, is a pure question of fact; and, as it was not raised by the appellant before the Court below, we do not think that we should allow it to be raised now.

Accordingly, we dismiss the appeal with costs.

Appeal dismissed

S. C. G.

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