Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Nilmoni Sing Deo Bahadoor v. *Taranath Mookerjee* (*No.* 21 *of* 1880), *from the High Court of Judicature, at Fort William, in Bengal; delivered May* 18*th*, 1882.

Present:

SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THE question presented to their Lordships in this Appeal is, whether the Deputy Commissioner of Manbhoom who has made decrees in rent suits under the Bengal Rent Act, No. X. of 1859, can transfer those decrees for execution into another district. That officer possesses the jurisdiction conferred on Collectors of Land Revenue, and having made decrees in exercise of such jurisdiction has further proceeded to make two orders transferring two decrees and execution. The High Court, in the exercise of their power of revision, have substantially quashed his Orders; in point of form, they have quashed one of the Orders and they have stayed proceedings on another. It is hardly necessary to enter into the details of the litigation. The High Court have decided that the Deputy Commissioner, as judge of the Rent Court of Manbhoom, had no authority to pass the Orders under Act X. of 1859, or any other law applicable to rent suits in that district.

A question was raised with respect to the jurisdiction of the High Court to entertain this question in revision at all. Their Lordships do

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not think it necessary to say anything upon that point, except that they entirely agree with the view taken by the High Court of their own jurisdiction.

The other question depends upon the construction of Act X. of 1859. That Act was passed for the purpose, among other things, of transferring suits for arrears of rent to the jurisdiction of the Collectors of Land Revenue; and it provided by section 23, paragraphs 4 and 7, that all such suits "shall be cognisable by the "Collectors of Land Revenue, and shall be "instituted and tried under the provisions of "that Act, and, except in the way of appeal, as "provided in this Act, shall not be cognisable "in any other Court or by any other officer, or "in any other manner."

It is not contended on behalf of the Appellant that Act X. of 1859 in any express way gave to the Collector the power of transfer which has been exercised. Neither is it contended for the Respondent that the words which have been read would, without more, prevent the provisions of Act VIII. of the same year from applying to the execution of a collector's decrees beyond the jurisdiction of his Court. The contention of the Respondent is, that there is something in the language of Act X. of 1859 which excludes this power from the jurisdiction of the Collector sitting as the judge of the Rent Court established by that Act. For that purpose the Respondent's counsel refer to a number of sections which may be illustrated by a single one. Section 77 deals with cases in which a third party appears to claim title in a rent suit; it gives the Collector certain powers of deciding the question before him, and then contains this proviso:—"The decision of "the Collector shall not affect the right of either "party who may have a legal title to the rent "of such land or tenure to establish his title

" by suit in the Civil Court." There are a number of other sections of similar frame; and the contention is, that the expression "Civil Court" is used in all those sections in such a way as to show that the framers of the Act X. of 1859 did not consider that the Rent Courts established by that Act are Civil Courts.

It must be allowed that in those sections there is a certain distinction between the Civil Courts there spoken of and the Rent Courts established by the Act, and that the Civil Courts referred to in section 77 and the kindred sections mean Civil Courts exercising all the powers of Civil Courts, as distinguished from the Rent Courts which only exercise powers over suits of a limited class. In that sense there is a distinction between the terms; but it is entirely another question whether the Rent Court does not remain a Civil Court in the sense that it is deciding on purely civil questions between persons seeking their civil rights, and whether, being a Civil Court in that sense, it does not fall within the provisions of Act VIII. of 1859. It is hardly necessary to refer to those provisions in detail, because there is no dispute but that, if the Rent Court is a Civil Court within Act VIII. of 1859, the Collector has, under section 284, the power of transferring his decrees for execution into another district.

The consequence of holding as the High Court have held is, that wherever Act X. of 1859 applies, persons seeking their rent against a tenant who is insolvent in the district in which he is sued have absolutely no remedy against him, though he may be possessed of great wealth in another district. No reason has been assigned, or so much as suggested, why such a distinction should exist between a person who is claiming a debt founded on rent and a person who is claiming a debt founded on any other transaction. The dis-

tinction does not exist in any other part of India, neither indeed does it exist in those provinces of Bengal in which Act X. of 1859 has been repealed and the Bengal Act VIII. of 1869 has taken its place. Therefore although it is not impossible that the Legislature should have intended to establish in Manbhoom and adjacent districts a distinction between claims for rent and all other claims which does not exist elsewhere, it requires very clear and cogent evidence on the face of the enactments, to support the conclusion that they really do intend such a distinction.

That consideration is somewhat emphasised by referring to Act XXXIII. of 1852, which was an Act passed to facilitate the enforcement of judgments in places beyond the jurisdiction of the Courts pronouncing the same. It provides that with respect to all Courts—not making a distinction between one Court and another, but with respect to all Courts,—judgments may be enforced in the manner provided in the Act, viz., by a transfer of the judgment out of the district of the judge who pronounces it into the district of some other judge within whose jurisdiction the debtor possesses property. It is true that in this Act it is said that the word "judgment" means a judgment in a Civil suit or proceeding. But suits for the recovery of rent are Civil suits or proceedings; and nothing can be clearer on the face of this Act than that the Legislature intended that everybody who obtained a decree in a court of justice should have a remedy against his debtor, wherever the property of that debtor might be.

The provisions of the Act of 1852 are substantially repeated in Act VIII. of 1859; and though that Act speaks of Civil Courts, and not all Courts as Act XXXIII. of 1852 does, yet the intention expressed is the same, viz., that all Courts entertaining Civil suits of any kind should

have this power of transferring their decrees for execution into another district. We find that Act XXXIII. of 1852 was repealed in the year 1861, and it is repealed as being simply obsolete, the only reason expressed for repealing it being that Act VIII. of 1859 had been passed. If Act VIII. of 1859 covered the same ground as Act XXXIII. of 1852, the earlier Act had become useless and might be swept out of the Statute Book. But the earlier Act would not have become useless unless the later Act covered the same ground.

In the opinion of their Lordships it is clear that, looking outside Act X. of 1859, no intention of making a distinction between rent suits and other suits in respect to the point now under consideration can be ascribed to the Legislature.

Turning to Act X. of 1859, the preamble recites that "it is expedient to re-enact, with certain "modifications, the provisions of the existing law "in connection with demands of rent, to extend "the jurisdiction of Collectors, and to prescribe "rules for the trial of such questions." It was pointed out by Mr. Doyne that the particular process now under consideration was not the trial of any question regarding rent. But when we look at the provisions of the Act, it is clear that they go beyond the trial of such questions, and provide for the execution of decrees. At the same time the scope of the Act appears to be only to provide for the execution of the decrees of the Collector within his jurisdiction. There is nothing in the Act which provides for any execution beyond his jurisdiction. And there is nothing to forbid the conclusion that such executions are left to the operation of Act XXXIII. of 1852, or the corresponding portion of Act VIII. of 1859.

Section 160 of Act X. of 1859 has a bearing on this question. That section provides that an appeal from the judgment of a Collector or Deputy Collector shall lie to the Zillah judge. But the

Zillah judge is a Civil Court to all intents and purposes. It was not disputed that if an appeal went from the Collector to the higher Court,—to the Zillah judge or to the High Court,—and the decree of the Collector for rent was there affirmed, it would become the decree of a Civil Court, which could not be excluded from the operation of Act VIII. of 1859. Then this consequence would follow, that the act of the parties would alter the nature of the decree; as long as the decree remains the decree of the Collector it is incapable of enforcement in any other district; but let the decree be affirmed by a Court of Appeal, and, though it is between the same parties for the same subject matter, it then becomes enforcible in another district. It is very difficult to suppose that any such result as that could possibly have been intended by the Legislature.

These considerations lead to the conclusion that the Rent Courts established by Act X. of 1859 must be held to fall within section 284 of Act VIII. of the same year.

The result is that their Lordships will humbly advise Her Majesty that the Order of the High Court of the 7th July 1880 be set aside, and that it be ordered that the rule nisi of the 17th of May 1880 therein referred to be discharged with costs. The Respondent must pay the costs of the Appeal.