Calcutta High Court
Kameshar Prasad vs Bhikhan Narain Singh And Anr. on 8 March, 1893
Equivalent citations: (1893) ILR 20 Cal 609
Author: Pigot
Bench: Pigot, Banerjee
JUDGMENT Pigot, J.

1. These appeals are from the judgment and decree of the Subordinate Judge of Gaya in each of two cases heard before him. Appeal 300 is brought in suit 88 of 1889, appeal 244 in suit 25 of 1889 in the Sub-Judge's Court.

2. The suits are brought to enforce claims said to arise in virtue of a stipulation contained in a bharnanama or deed of usufructuary mortgage, dated the 10th Assin 1288 (29th September 1880), between Sir Jai Prakash Singh, K.C.S.I., then Raja of Deo, and his son, defendant No. 1, who is the present Raja, on the one part, and the plaintiff on the other. By that deed 83 mouzahs were given in bharna for nine years, up to Jeth 1296 (May 1889), to the plaintiff to secure the sum of Rs. 3,35,000, with interest at eight annas per centum per mensem.

3. The mouzahs mortgaged, which are set out in the schedule to the deed, are described in the instrument as held in mokurrari and lease on annual uniform and varied rentals. The deed provides that the mortgagee shall remain in possession of the entire mouzahs from 1288 in continuance of the lease of the old lessees up to the term of the mortgage deed, collect the rents from the lessees and mokurraridars (subject to any zarpeshgis existing), pay the Government revenue and road and public works cesses, and take the balance on account of principal and interest due to him.

4. A few provisions in the deed must be referred to:

In paragraph 2, the mortgagee is given power to make new settlements after the expiration of any lease of any of the mouzahs or to retain the mouzahs in his direct possession. In case of any increase of rental by the new lease or by direct possession, whatever increase there may be in the rental of the lease or in the usufruct in case of direct possession, is to be enjoyed as profit by him; all profit and loss on account of increase and decrease of rental and usufruct to be enjoyed and sustained by him exclusively. It is provided that within the term fixed in the deed, the mortgagors shall repay the whole principal after deducting the realizations, that is in Jeth 1296, and possession is then to be relinquished by the mortgagee.

Paragraph 4 specifies the amount of the balance which will be due in Jeth 1296 (after deducting the realizations upon the footing of the yearly values set out in the schedule in the meantime), namely, Rs. 2,48,043-4-7, when the mortgagee is to be entitled to bring a suit if the balance be not repaid.

Paragraph 12 provides that in case of non-payment of the balance of Rs. 2,48,043-4-7 on the expiration of the stipulated time, the mortgagee may realize the principal and interest through lessees or by sir settlement up to 1309 Fasli, that the conditions of the deed shall remain intact until realization of the said money, and that he will in 1309 Fasli give up possession after realizing the

whole of the principal money and interest. This provision is based like that just referred to in paragraph 4 of the deed, upon computation of the realizations from the mortgaged property upon the footing that the annual values set out in the schedule to the deed will be recoverable by the mortgagee during the period specified, so that by the year 1309 at the outside the debt will have been paid off.

5. The 10th paragraph is that which relates to the matters out of which these suits chiefly arise:

With regard to ikrarnamas of mouzahs, i.e., twenty-three in number, for the sum of Company's Rs. 12,712-11-6 executed by lessees, being unregistered deeds, which are being made over to the said mahajan, we do declare that within four months we will have either kabuliats or ikrarnamas executed by the living lessees or by the heirs of deceased lessees, and after having them registered we will deliver them to the said mahajan. If we do not deliver deeds duly registered, and on suit being brought under unregistered deeds, the mahajan's claim be dismissed, then owing to the dismissal of claim on the ground of the deed being an unregistered one, whatever amount of claim of the said mahajan be dismissed or reduced, we, the declarants, shall be liable for the principal with interest and costs of the same; and in respect of all such mouzahs as to which the said mahajan's claim will be dismissed on the ground of the deeds being unregistered, we will grant leases in respect of the said mouzahs on the same rental, and make over registered kabuliats to the said mahajan. In the event of non-performance of the above condition, we, declarants, will pay yearly from our own pockets the rents of the mouzahs for which claim will be dismissed; and in case we fail to pay, the said mahajan is and will be competent to recover by institution of suit in Court the rents of the mouzahs claim for which will be dismissed, with costs aforesaid and interest thereon, from the mortgaged and hypothecated properties, and other mortgaged and unmortgaged properties belonging to us, declarants, whereto we, the declarants, will have no objection. When we will give duly registered deeds to the mahajan, then this condition will be annulled and abrogated; and alter delivery of the registered kabuliats and ikrarnamas it will be proper and incumbent on the mahajan to recover whatever balance may be due from the lessees, wherewith we, declarants, have and will have no concern whatever.

6. The mortgagors did not carry out the undertaking contained in the 10th paragraph; they did not cause registered kabuliats to be executed by the holders of the ticca leases. It is with respect to the rents of some of these mouzahs that these suits are brought.

7. It does not appear on the record in these cases what took place after the execution of the mortgage with respect to the others of the 23 mortgaged mouzahs which are referred to in paragraph 10 as being held under unregistered deeds, except that it is stated in the 4th paragraph of the plaint in suit 25 (Appeal No. 244) that the conditions in paragraph 10 of the deed were not complied with, which would seem to apply to all of the 23 mouzahs.

8. Of these suits, the first, 88 of 1891 (Appeal No. 300), relates to the realizations from the year 1290 to 1293 from five mouzahs, namely, mouzahs Dugal, Bedhui, Dadhwa, Charkawan Kasba Haji, and Chuk Belhar or Bahuara, and mouzah, Kheraperoza; the second, 25 of 1889 (Appeal No. 244), relates to realizations (at a later period) from three of those mouzahs, namely Dugal, Bedhui, and

Dadhwa, for 1294, 1295 and 1296. Of none of these mouzahs did the plaintiff obtain possession after the execution of the deed in full accordance with its provisions. Whether or not the mortgagors continued to collect the rents from them from the date of the mortgage in 1288 was not in issue in these suits. As to Charkawan Kasba Haji, it appears that the plaintiff did bring a suit against the thikadar of that mouzah for the rents for the years 1288 and 1289; and that his claim was disallowed to the extent to which the thikadar disputed it, that is to say, in respect of an enhanced rent stated in the schedule to the deed, but found not to be recoverable in that suit by reason of the ikrarnama under which it was claimed not having been registered.

9. As to Dugal, Bedhui, Dadhwa and Chuk Belhar, we think it must be taken as clear, from the evidence of defendant No. 2, and of Mukbul Ali, and from the wasilbaki to be presently mentioned, that the collections from these mouzahs, whether from the thikadars or from the katkinadars, were made, at first by the defendant No. 1, or the defendant No. 2 as his agent, and afterwards by defendant No. 2 as manager under the Deo Estates Act.

10. The Deo Estates Act received the assent of the Governor-General on the 10th March 1886, and on the 11th, as we have said, defendant No. 2 was appointed manager under it. He had been previously, from about January 1885, in the management of the estate, according to his evidence; it appears that his services were transferred, as from that date, from the Education Department to the Board of Revenue, for employment as such manager.

11. In June 1886 accounts were made up between the defendant No. 2 and the plaintiff, who was represented on the occasion by two of the witnesses in the case, Mukbul Ali and Fakir Chand, who are in his employment as tahsildars of villages held by him under the mortgage or bharnanama. A wasil baki was then made up on both sides, showing a balance in favour of the plaintiff of Rs. 22,570-2-8. This was signed by the Raja, defendant No. 1. This wasilbaki purported to be made between the plaintiff and the Rajah, but was also signed by defendant No. 2. It gave plaintiff' credit for collections from 1290 to 1293 from Dugal, Bedhui, and Dadhwa, for the enhanced rent of Charkawan from 1288 to 1293, for collections from Kheraperoza from 1292 to 1293, from Chuk Belhar from 1292 only, and a small item of surplus of 1290 : for a loan of the Rajah in 1291 (the Deo Act was passed in 1292) amounting, with interest up to 1293, to Rs. 4,249-10-0, and another made in 1293, amounting with interest to Rs. 1,032-9-0. On the other side of the account the plaintiff was debited with sums due by him on account of rent to the Rajah. The balance was Rs. 23,665-8-6. From this was deducted Rs. 1,095-5-9, being the amount of enhanced rent in respect of Charkawan which the plaintiff had failed to recover in the suit already mentioned. It would appear from the note on the document to have been deducted as having accrued due from the Rajah alone. We shall refer to this afterwards. Making this deduction, the amount found due was Rs. 22,570-2-9.

12. In 1888 applications appear to have been made to defendant No. 2 (whom we shall call by his name, Bhoobun Lal) on behalf of plaintiff for payment of the amount due. There appears on the record an Exhibit, No. 3, entitled a "proceeding" of the manager's office, signed by Bhoobun Lal, in which, styling himself a "Court," the manager passes an order "that the kothi" (meaning the plaintiff) "do appoint a person to adjust accounts." This is done apparently upon an application for adjustment of accounts and for possession of the mouzahs of which plaintiff was entitled to

possession under his deed, the right to which possession is admitted in the "proceeding."

13. Then followed a letter from plaintiff's agent to Bhoobun Lal dated November 22nd, 1888 (Exhibit 12), complaining of non-payment of the amount due, and also that possession had not yet been given, while the rent of Dugal and Bedhui is being realized by the tahsildar of the manager; stating that the plaintiff's claim in respect of such collection continues as before; offering to pay any rent coming due on lease from him, or else that the manager should deduct any such rent due from the realization of the aforesaid mouzahs, paying the residue to the plaintiffs; and asking that an account of the amount then due to plaintiff be taken.

14. Nothing having been done in compliance with this letter, the plaintiff presented a petition to the Collector of Gaya, dated January 20th, 1889, stating his grievances, and asking (1) for payment of the amount found due to him by the wasilbaki of June 1886; (2) asking for an adjustment of the accounts as to the collections of the villages of which possession had hitherto been withheld from him, for the years 1294, 1295, and part of 1296; and (3) that possession of them be made over to him, and his servants allowed to collect the rents. The villages mentioned in this petition are Dugal, Bedhui, Kudoha Khurd, and Bahuara.

15. Upon this an order was passed by the Collector on March 23rd, 1889.

Order.

I have this day seen Baboo Harihar Nath first, the pleader for the petitioner. I have explained to him--

(1) That no debt can be paid off, except by enjoyment of the usufructuary mortgage, till the debt due to the Maharajah of Durbhungah has been reduced to the amount stated by the Act. This is admitted in principle.

(2) He claims the rents collected from us for two villages (Dugal and Bedhui), which fall within the usufructuary mortgage. I explain that I do not, as at present advised, dispute his claim to this money, provided he admits the money due by him to the estate on account of certain thika rights which he has purchased. I have no objection to his drawing up a wasilbaki on these grounds, provided that if the balance turns out to be due from him, he will pay it promptly. More I cannot say. Regarding the two other villages mentioned in the petition, we are not in possession of them and do not claim possession of them. The petitioner can collect the rents himself without interference from us.

(Sd.) George a Grierson, 23-3-89. Offg. Collector.

16. The plaintiff then, on April 2nd, 1889, petitioned the Collector, stating that Bhoobun Lal was then at Gaya : that his report as to the wasilbaki had already been received by the Collector : and asking that his petition of January 20th, 1889, should be referred to Baboo Raj Kishor Narain, Deputy Collector of the Deo Raj Estate, and an adjustment be taken in the presence of plaintiff's

pleader and of Baboo Bhoobun Lal, and that whatever amount might be found due to the plaintiff should be awarded to him.

17. Upon this petition an order was made on the 24th April 1889:

Inform the petitioner that I cannot spare Baboo Raj Kishor Narain Singh for the purpose.

18. The plaintiff then in the following June brought these suits.

19. In suit 88 of 1889 the plaintiff claims the Rs. 23,665-8-6 found due by the wasilbaki of June 1886, including, therefore, the Rs. 1,095-0-9 (in the plaint as printed, 1,095-5-0), on the ground that his right to this sum had been admitted. He also claims interest, making in all Rs. 32,106-3-9. He asks for a decree for the money; and also that his mortgage right be established for this sum against the properties mentioned, that is, all the mortgaged property, and for other relief.

20. In suit 25 of 1889 the plaintiff sues for Rs. 11,412-11-9, being the amount of rents claimed by him in respect of the mouzahs Dugal, Bedhui, and Dadhwa for the years 1294, 1295, and 1296, after giving credit for the rents due by him in respect of leases held by him of land appertaining to the Deo estate.

21. In suit 88 of 1889 the lower Court made a decree in favour of the plaintiff for the capital sum claimed, that is, Rs. 23,665-8-6, with interest at 6 per cent. from the date of the wasilbaki; that is, June 4th, 1886, subject to all the rules of the Chota Nagpur Encumbered Estates Act and the Deo Act. It dismissed the suit 25 of 1889.

22. The defendants appeal in the one case, and the plaintiff in the other.

23. In the argument before us the effect of the Deo Estate Act formed the principal subject of debate, but connected with this the nature of the plaintiff's claim in each suit was minutely discussed.

24. If the cases were to be considered apart from the effect of that Act, the second defendant being treated as manager and agent of the first defendant, the Rajah, there would be little doubt, we think, that plaintiff would be entitled to succeed, subject to any set-off established in suit 25 of 1889.

25. It was contended by the defendants in the case that the provision in paragraph 10 of the deed could only create a liability on the part of the mortgagors in case a suit or suits brought by the mortgagee to recover rents of mouzahs at the rates specified in the schedule, should be dismissed on the ground of want of registration of the instrument or instruments under which rent might be claimed. The only case in which a suit was brought, and was in part unsuccessful, on this ground, was that of Charkawan in respect of the enhanced rent specified in the schedule in respect of that mouzah.

26. But the case made by the plaintiff is not one such as is contemplated by this provision of the deed, save as to Charkawan, to which that provision exactly applies. As to the rest, plaintiff's claim is

not based merely on his failure to recover rents by reason of the neglect or omission of the mortgagors to cause registered deeds to be executed. It is not necessary to determine what the exact nature of the mortgagee's remedies under paragraph 10 of the deed might have been in respect of such mere neglect or omission, but we may say that it would not seem very reasonable that the mortgagee should, in every case, be compelled to bring a suit certain to be defeated as a condition precedent to any remedy, with the consequence that, as a matter of course, in each case the mortgagor must pay the cost of such hopeless and merely formal suit. That question does not, however, arise in the state of circumstances now under consideration. There was not a mere neglect to carry out the terms of paragraph 10, but an actual collection of rents and profits in direct infraction of the essential provisions of the deed by which such collections became, as between the owner of the estate and the plaintiff, the property of the latter. The evidence shows by the admissions of the Rajah defendant, that the collections were made by him or on his behalf, which are entered in the wasilbaki. Thus, not only was the engagement in paragraph 10 of the deed not observed by his father or, after his father's death, by himself, but advantage was taken of this for the collection of those rents and profits which had been given to the mortgagee under the deed. It seems to us immaterial whether the collections so made were taken from thikadars or from hatkinadars, The Rajah had no right whatever to make any collections of rents and profits of mouzahs assigned under the deed. He was, and continued to be, bound, so far as he could do so, to put the plaintiff in possession of those rents and profits. So far from doing this, he took them himself. He took from the persons who held the mouzahs, whether thikadars or katkinadars, (plaintiff being entitled to sir possession if there were no thikadars), money claimed by him and received by him as rent. Whether his receipts could or could not be a good discharge to those tenants as between them and the plaintiffs, the Rajah could not be heard to say that, as he had no right to receive the rents, he cannot be treated as having, when these payments were made to him, received them as rents at all. He took them as such, and the plaintiff would be entitled to treat them, in the Rajah's hands, as rents for which the Rajah was bound to account to him, and which he was bound to pay over to him,--at any rate on demand made. As to whatever was received by the Rajah before the Deo Estate Act came into operation, these observations apply to the present case, as to the Rajah's liability apart from the protection given him by that Act. They would equally, we think, apply to the subsequent period, had Bhoobun Lal made collections as the Rajah's agent of the sums claimed in suit 25 of 1889, and not, as he did, in the capacity of manager under the Act. The Rajah would, it that case, have been liable for them under the ordinary law; and the plaintiff would be entitled to a decree in Suit 25 of 1889, save so far as a set-off was admitted or was proved by the defendant.

27. In the point of view to which we have just adverted, the wasilbaki in Suit 88 of 1889 would be, of course, both evidence of the receipt of money for which the Elijah would be bound to account, and also an agreement to pay the balance therein found due upon settlement of account.

28. We have now to consider the effect of the Deo Estate Act, 1886, upon the rights of the parties to these suits in respect of the subject-matter of each suit, This Act is entitled "an Act to apply the Chota Nagpur Encumbered Estates Act, 1876, to the Deo Estate in the Gaya District"; and by Section 2 it is enacted that the provisions of that Act as amended by Act V of 1884 may be applied in the case of Rajah Bhikhan Narain Singh Bahadur (described in the preamble as of Deo in the district of Gaya), subject to certain modifications provided in the Act.

29. The Chota Nagpur Act is passed, as stated in the preamble, to provide for the relief of holders of lands in Chota Nagpur, who may be in debt and whose immoveable property may be subject to mortgages, charges, and liens. It provides a machinery for the management and administration of the estates of persons such as are described in the preamble, and to whom the provisions of the Act are, with the consent of the Lieutenant-Governor, applied, for the investigation and ascertainment of their debts and liabilities, and for the discharge of them in the manner provided by the Act. For these purposes a manager is appointed by the Commissioner, in whom by the terms of his appointment may be vested the management of the whole or any portion of the immoveable property of or to which the said holder is then possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by, or devolve on him or his heir during the continuance of such management. The manager during his management of the immoveable property is to receive and recover all rents and profits in respect thereof, to pay certain necessary outgoings, and an annual sum for the maintenance of the holder, his heir and their families, and apply the residue in settlement of such debts and liabilities of the holder and his heir as may be established under the Act. Part IV provides for the ascertainment of the debts and liabilities by the manager, who is, when they are finally determined, to prepare a schedule of them, and a scheme for the settlement thereof, which, when approved by the Commissioner, is to be carried into effect. The manager under the Act has the fullest powers to receive and recover rents and profits, to enquire into and settle the debts and liabilities, to cancel existing leases, to remove a mortgagee or conditional vendee in possession, to grant leases, to mortgage with the consent of the Commissioner, and to sell--but this last only with the consent of the holder and his next heirs. When the debts and liabilities are discharged, or when the Commissioner, in exercise of powers given him by the Act, thinks that the provisions of the Act should not continue to apply, the holder or his heir shall be restored to the possession and enjoyment of the property subject to leases, mortgages, or sales made by the manager during his term of management.

30. The Act therefore creates a sort of administration of the immoveable estate of a debtor, in some respects resembling that pursued in an administration suit, but with some material differences. It primarily aims at the preservation of the estate, which cannot be sold without the consent of the holder and his heir. The Act obviously aims at the complete protection of the estate from litigation, by barring the remedies creditors would otherwise have in the Civil Courts. To what extent and whether in respect of all, or only of some proceedings and claims, the provisions of the Act do operate as a bar, is one of the questions to be determined in these appeals.

31. The Act is 30 framed as to render it not easy to construe.

32. The first question is, what are the debts and liabilities, the existence of which is made an occasion for conferring the special privileges created by the Act for the benefit of holders of land in Chota Nagpur? Are they limited to debts and liabilities actually charged upon the lands of the holders, or do they include any debts whether secured by charge on immoveable property or not? The scheme of administration set up by the Act relates to immoveable property alone, and is directed towards the preservation of it from the creditors of the holder. But does the Act intend to give relief to holders of land who may be subject to debts not charged on land, in respect of such debts?

33. The preamble refers to the persons whose relief is contemplated as "holders, etc.," who may be in debt and whose immoveable property may be subject to mortgages, charges, and liens. That would prima facie seem to restrict the class to be relieved to holders whose immoveable property was subject to mortgage, and by implication, to limit the relief to be afforded to them, to matters arising in respect of debts of that nature.

34. But in Section 2 the preliminary condition' to the grant of the vesting order is thus described:

Whenever any holder of immoveable property "(then passing over the next four, only alternative classes)" applies in writing to the Commissioner, stating that the holder of the said property is subject to, or that his said property is charged with, debts or liabilities other than debts due or liabilities incurred to Government, and requesting that the provisions of the Act be applied to his case.

35. And in Act V of 1884, amending the Chota Nagpur Act, the following Clause (a) is added to Section 2;-- Every application under this section must state the particulars of the debts and liabilities as aforesaid to which the said holder is subject or with which his immoveable property is charged." Further, Section 3 protects the moveable property of the holders for whose relief the Act is framed from attachment or sale under process of any Civil Court in British India in respect of such debts and liabilities other than as aforesaid.

36. Of course it is possible, strictly speaking, that the provision is only intended to prevent mortgagees who might obtain money-decrees on mortgage debts from enforcing such decrees against moveable property of the "holder" to be relieved under the Act. But this would be to impute an intention not accounted for elsewhere in the Act, and not explained by its professed purpose which chiefly, at least, is the protection of immoveable property--a purpose not helped by visiting mortgagees with a special disability in so far as their claims are mere money-debts; and besides, this view seems somewhat inconsistent with the express reference to process of any Civil Court in British India, which Courts could not ordinarily make decrees on mortgages of land in Chota Nagpur so that money-decrees of such Courts would be aimed at.

37. Upon the whole, therefore, it seems clear to us that the Act is not intended to afford relief to holders of land in Chota Nagpur only in respect of debts secured by mortgages, charges, and liens upon immoveable property. We think the relief if Government should see fit to grant it was intended to apply to debts and liabilities to which the holder was subject or with which his property was charged. We think the phrase "such debts and liabilities" which occurs several times in the Act, and which was dwelt on in argument, means debts and liabilities other than debts due, or liabilities incurred, to Government, and includes every other debt or liability.

38. It is no doubt singular that a law providing a special mode of administering the estates of a particular class of debtors, and suspending the operation of the ordinary law for that purpose, should exempt the moveable property of the debtors as well as the debtors themselves from liability to process, and yet omit to place the moveable property in the hands of the person who is charged with the administration of the estate and the settlement of creditors' claims. But this law itself is

anomalous. It is a law of privilege designed for the protection of the "holders of land in Chota Nagpur" enacted perhaps for reasons of State, applying to that non-regulation district, the state of society in which differs a good deal from that in Bengal.

39. We now have to consider the effect of the vesting order upon the rights of third persons, that is, of persons other than Government or the "holder." Section 3 is as follows:

3. On such publication the following consequences shall ensue:

First.--All proceedings which may then be pending in any Civil Court in British India in respect to such debts or liabilities, shall be barred, and all processes, executions and attachments for or in respect of such debts and liabilities shall become null and void.

Secondly.--So long as such management continues, the holder of the said property and his heir shall not be liable to arrest for or in respect of the debts and liabilities to which the said holder was immediately before the said publication subject, or with which the property so vested as aforesaid or any part thereof was at the time of the said application charged, other than debts due or liabilities incurred to Government.

Nor shall their moveable property be liable to attachment or sale, under process of any Civil Court in British India, or in respect of such debts and liabilities other than as aforesaid; and Thirdly.--So long as such management continues-

(a) The holder of the said immoveable property and his heir shall be incompetent to mortgage, charge, lease or alienate their immoveable property, or any part thereof, or to grant valid receipts for the rents and profits arising or accruing therefrom.

(b) Such property shall be exempt from attachment or sale under such process as aforesaid, except for or in respect of debts due or liabilities incurred to Government, and

(c) The holder of the same property and his heir shall be incapable of entering into any contract which may involve them or either of them in pecuniary liability.

40. Section 7 is as follows:

7. Every debt or liability other than debts due or liabilities incurred to Government or (in the case of under-tenures) the rent due to the superior landlord, to which the holder of the property is subject, or with which the property is charged, and which is not duly notified to the manager within the time and in manner hereinbefore mentioned, shall be barred:

Provided that when proof is made to the manager that the claimant was unable to comply with the provisions of Sections 5 and 6, the manager may admit his claim within the further period of nine months from the expiration of the said period of three months.

41. The first clause of Section 3 is no doubt obscurely worded. Does it mean, as argued, that only proceedings pending when the vesting order is published, shall be barred? Or does it go further and bar all suits instituted after the vesting order is made, and while it is in force?

42. If the first meaning be that which is to be attributed to it, then the latter half of the clause is mere surplusage, for it cannot possibly, so far as pending proceedings go, add to the force of the first half, which declares all such proceedings barred. If the process, executions and attachments referred to in the second half be processes, etc., in pending proceedings, and this no doubt would be the appropriate meaning of the second and third of such words, they would necessarily be null and void, if had in proceedings themselves expressly barred.

43. Now "process" includes writs of summons, and without a writ of summons, or in our phraseology here, a summons, a suit cannot be validly instituted at all. Therefore, when the Legislature declares that in respect of particular matters all processes shall be null and void, it absolutely bars all suits respecting them. If processes had stood alone in the second half of this clause, there could be little doubt; the addition of the words "execution and attachments" is no doubt embarrassing, because obviously in themselves they can have no possible force at all: they are mere repetition unless their effect be, indirectly, to qualify the word "process." But we do not think that they can be used to cut down the meaning of the word "processes" which precedes them so as to limit it to processes ejusdem generis, that is, processes in execution; if we gave them that effect, the result would be to render the whole of the second half of the clause wholly futile, being all of it mere repetition. We think we must give the word "processes" its full meaning, and must hold that it includes summons, and in doing so, bars all suits to which the clause applies.

44. No doubt it may be said that one reason we have assigned for attributing to the second part of the clause of Section 3 the effect which we hold that it has, namely, that otherwise it would be mere surplusage, applies with equal force to the provisions secondly contained in Section 3, as to freedom from arrest, and freedom of moveable property from attachments; since arrest or attachment of moveable property could only take place under "proceedings" of which process of arrest or of attachment would be part, or under processes, etc., made void already. All that can be said as to this is, that these provisions do seem superfluous, except so far as they may apply to process actually complete and in course of execution at the time of the vesting order.

45. There is a suggestion, as to the scope of the second half of the first clause, which we think could not be adopted; namely, that processes, etc., therein referred to relate to proceedings pending in respect of such debts and liabilities, in the first part of the clause. This would be to give a special meaning to "such debts and liabilities" when it occurs in the second half, and make that description mean such debts and liabilities in respect of which proceedings are pending at the time of the publication of the vesting order. We think we cannot attribute to these words in this place that special meaning. We think they mean here, as they do elsewhere, debts and liabilities other than debts due or liabilities incurred to Government.

46. The view of the section taken by us seems perhaps to some extent confirmed by (L.R. 2 Ch. Div. 525) the marginal note of the clause, viz., "Bar of suits." We are disposed to think we may look at the

marginal note for assistance, for with reference to Indian Acts, we should probably rather apply the dictum of Jessel, M.R., in In re Venours Settled Estates (L.R. 2 Ch. Div. 525), than his correction of it, in Sutton v. Sutton L.R. 22 Ch. Div. 513. Indian Acts, we believe, are always framed with the marginal notes which appear in the State publications of them.

47. Further, Section 7 expressly declares that every debt or liability other than debts due, &c., to Government, or rent due to the superior landlord, which is not duly notified to the manager, shall be barred. It is true that this section is in Part IV relating to the settlements of debts by the manager, and it might be argued that the bar only relates to the proceedings before him. Still this is not expressly said, while the bar of such debts or liabilities is express. We think it must be read in connection with Section 3, and indeed in the light of the whole scope of the Ant. The only remedy enjoyed by creditors is by claim before the manager and by payment, if he does pay, under the powers given to him.

48. Section 12 provides, amongst other things, that if within six months after the publication of the order the Commissioner thinks the provisions of the Act should not continue to apply, the holder or his heir shall be restored to possession and enjoyment of the property, such restoration shall be notified in the Calcutta Gazette, and thereupon the proceedings, processes, executions and attachments mentioned in Section 3 (so far as they relate to debts and liabilities, which the manager has not paid off or compromised) and the debts and liabilities barred by Section 7, shall be revived.

49. No doubt part of these provisions is a little mysterious : how it can be, for instance, that processes, &c., themselves declared null and void can be revived "is rather beyond our comprehension : but this provision seems to be the only one which exists in the Act for allowing creditors a resort to the Civil Courts, once the vesting order has been made.

50. Section 7 of the principal Act is one of those sections which deal with the investigation and settlement of debts by the manager; by Clause (4), Section 1, of the Deo Act, the debts in the schedule of the Act, in which the plaintiff's debt is included, are, save so far as any error may be proved (and there is none in this case), to be deemed justly due, and Section 7 of the Chota Nagpur Act applies, we think, mutatis mutandis, to create a bar in respect of the debts dealt with in Section 1, Clause (4) of the Deo Act.

51. The result of an examination of Section 3, and of Section 7 read with regard to the whole scope of the Act is, that suits or proceedings to enforce such debts or liabilities as are contemplated by the Act, that is, other than debts due or liabilities incurred to Government are, if pending at the time of the vesting order, barred : if instituted after it, in respect of such debts and liabilities, null and void in their inception.

52. So far as in suit 88 of 1889 the amount claimed is in respect of rents improperly taken from the tenants before the Deo Estate Act was in operation, that amount was a debt or liability within the meaning of Section 3, part the first, and no suit will lie for it. The only remedy is under the Act before the manager. So far as it is in respect of a loan made to the Rajah and due at the time of the vesting order, it is within Section 3, part the first, and no suit will lie, the remedy is before the

manager. So far as it is in respect of a loan made to the Rajah after the vesting order, the Rajah was by Section 3, part the third (c), incapable of entering into a contract of loan, and no suit will lie : there is no remedy at all.

53. So far as the claim made in suit 88 of 1889 relates to money received by the manager in violation of the plaintiff's rights under the deed, such receipt, being of the rents of property of which the Rajah was in possession at the time of the vesting order, would be, prima facie at any rate, in strict accordance with the manager's duties, and the second defendant Bhoobun Lal would not be liable in any case. If the moneys were received by him wrongfully, as, for instance, (it was suggested) as a trespasser upon plaintiff's possession, he might no doubt be liable. Such a contention might involve questions of difficulty as to the defence under Section 22 of the Chota Nagpur Act applicable here.

54. But all claim against the defendant Bhoobun Lal personally was abandoned in the Court below, as appears from the judgment where reference is made to the defence under Section 424, Civil Procedure Code.

55. These observations as to any liability arising from the receipt of moneys by the defendant Bhoobun Lal, apply equally to Suit 25 of 1889.

56. It was argued that Bhoobun Lal's acts might constitute ground for a decree against the Rajah, that is, the estate, for the money received by him. We do not see how from any point of view such a liability could be made out. The Rajah has ceased to have any control over the property, which is, with its income, absolutely in the hands of the manager. If the manager takes possession of property or of income not properly part of the estate, there may be a remedy against him personally, if he is not protected under Section 22. But he cannot be said in doing this to have acted on behalf of the Rajah, even were it the case that he had the power to bind the Rajah by any act, as representing him : and there is nothing in the Act to countenance such a contention.

57. Having regard to Section 2, Clause (7) of the Deo Act--whether a suit to compel the defendant No. 2 to put plaintiff in possession of such of the mouzahs mortgaged to him as that defendant had possession of, in such a manner as to allow him the full benefit of the deed to which he is entitled, would lie, we need not here consider. These are not such suits.

58. We think both suits ought to have been dismissed for the reason here assigned. We need not therefore discuss the character of the decree in suit 88 of 1889, as being made subject to the Deo Estate Act, which we presume means that the decree cannot be executed by reason of the provisions of that Act.

59. The case is one of very great hardship, no doubt. The plaintiff's right, we think, is clear. As to parts it has been established by the adjustment of accounts of June 4th, 1886, which was of course simply a proceeding in the course of administration by the manager, Bhoobun Lal, defendant No. 2. That claim being fully established, the plaintiff expected naturally enough to be paid : and failing to obtain either from the manager or the Collector payment of his admitted debt, he applies to the Civil Courts for redress. The Courts can give him no redress. Their jurisdiction is ousted by the provisions

of the Acts; they have no power to compel the officers appointed under the Act to pay the plaintiff his claim, supposing it to be in the power of those officers to do so, a matter on which we have no means of forming a judgment.

60. We allow the appeal in 300 of 1891 (88 of 1889) and dismiss the suit. We dismiss the appeal in 244 of 1891 (25 of 1889).

61. As to costs, we have said that this appeals to us to be a case of very great hardship. Our attention has been drawn to the recital in the preamble of the Act --a most unusual recital. It is: "Whereas the person to whom the debts are due and the liabilities have been incurred have assented to the application of the Chota Nagpur Encumbered Estates Act, 1876, to the case, on the condition that their title to receive the principal and interest due to them be in no way impaired thereby." Now, whatever may have been the meaning of the draftsman or composer of this enactment, it is not unreasonable to suppose that, assuming that recital to be strictly accurate in every respect, the creditors mentioned in the schedule gave their assent on the supposition that something more than a mere recognition of their rights without any means of enforcing them being allowed them was intended by the Act: They might not unnaturally suppose that when the Imperial Legislature stepped in with a law of privilege in favour of this nobleman, and created a machinery under which their claims were to be dealt with, and in doing so solemnly recited the preservation of their title to receive the principal and interest due to them, the measure passed by the Legislature with that recital did confer upon them the right to have recourse to the Courts of Justice, when the officers appointed under the Act treated them as the plaintiff has been treated in this case; and there is a further consideration as to this, and that is, that both the Chota Nagpur Encumbered Estates Act and the Deo Estate Act are themselves so framed that not merely a respectable banker such as the plaintiff, but even a lawyer, might well find a difficulty in assigning to many of the provisions of either enactment any certain meaning. In considering, therefore, what course we should take with regard to costs in this matter, we should consider, first, the extreme hardship of the case; secondly, this passage in the preamble which apparently promises a security which the body of the Act takes away; and thirdly, the obscurity of the Act itself which does, if our construction is right, take away their right, but as we say, in highly obscure language. We have to consider under these circumstances whether we ought to visit the plaintiff with any costs at all, and we think that, having regard to the circumstances of the case, and the difficulties surrounding interpretation of the Acts under which his legal rights have been superseded, it would not be just if we were to compel him to pay any part of the costs which the defendants have incurred in these proceedings either in this appeal or in the Court below. Unfortunately, as the jurisdiction of the Courts is ousted, we cannot approach the question of awarding his costs out of the estate. We will not say what we would do if we had the power to deal with them. We have the power to abstain from ordering him to pay the costs of the other side, and we do so. We allow the appeal in 300 of 1891 (suit 88 of 1889), we dismiss the appeal in 244 of 1891 (suit No. 25 of 1889), and we order that the parties respectively do bear their own costs both in the Court below and in this Court.