

(1870) 01 CAL CK 0009

Calcutta High Court

Case No: Reference No. 73

John Dacosta and
Others

APPELLANT

Vs

M.R. Currie and Others

RESPONDENT

Date of Decision: Jan. 6, 1870

Judgement

Jackson and Markby, JJ.

The reference now before the Court relates to certain questions arising in execution of a decree in the Court of the Recorder of Moulmein. The reference is made by the Recorder under the 22nd and following sections of Act XXI of 1863. A preliminary objection was taken to the effect that those sections do not contemplate a reference upon questions arising in execution of a decree, and do not entitle this Court to determine any such questions upon such reference, and we are referred to a decision of the first Bench of this Court in the matter of B. Sutherland 9 W.R. 478.

2. After hearing the learned Advocate-General against the objection, it appears to me that we ought to follow the decision in question. The words of section 22, which is the first of the sections relating to references from the Recorder's Court, may, no doubt, be considered ambiguous; and I should not be inclined to hold that the expression in any suit relates exclusively and necessarily to questions arising in the suit before decree; but when we look at the 23rd section, and find provision made for the way in which the Recorder is to proceed in cases where a reference has been made, it is quite clear that such proceedings relate exclusively to cases in which a decree has not been passed, and in which therefore the question has arisen at the trial of the suit, or at any rate before the decree. And this view is in some slight degree confirmed by the concluding terms of section 25, which enacts that, when the judgment of the High Court has been transmitted to the Recorder, he shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court." This, I apprehend, was meant to signify the disposing of the whole case, the determination of the suit, and not merely the disposing of the particular point on which the reference was made. There is no doubt a distinction between the terms of this Act and the terms of the Small Cause Court Act, Act

XI of 1865, on the same point, it may be that, when the Legislature passed the latter of the two Acts, the ambiguity of the words used in Act XXI of 1863 was observed, and the phraseology was improved in the latter Act. However that may be, I think we ought to follow the decision of the first Bench, and declare we have no jurisdiction to entertain the reference.