

(1872) 03 CAL CK 0001

Calcutta High Court

Case No: None

Balaram Mullick and
Another

APPELLANT

Vs

E.R. Solano

RESPONDENT

Date of Decision: March 7, 1872

Judgement

Phear, J.

During the experience, I may say considerable experience, which I have now had in this Court, I have been obliged to consider the scope of this section very many times, and I certainly feel myself unable to take the view which was taken of it by the Judges of the Bombay Court in *In re Abraham* 6 Bom. H.C., 170. I apprehend that express words are necessary in order to give to a Court of locally limited jurisdiction a power of action beyond its local limits. I don't find any words sufficient for this purpose in this section. It appears to me that the common sense meaning of the section is that the property there spoken of is property within the jurisdiction of the Court, viz., property which, when the decree is made, the Court would be able to reach and make available in satisfaction of the decree. That does not seem to me a reasonable construction of the section which makes the intention to dispose of property anywhere in the world, in England or America for instance, the event or contingency for founding the power of attaching it, intended by the Legislature to be alternative to removing the property out of the local jurisdiction. I see nothing in the Act to indicate that the Legislature intended an extra-jurisdiction power of attachment to be given to a local Court before judgment, and therefore, before the merits of the plaintiff's claim against the defendant have been heard and determined, while it most distinctly left them without that extra-jurisdiction power of attachment after decree, i.e., at a time when the merits between the parties had been ascertained, and it might be expected that Courts would be endued with the fullest power of giving relief to the judgment-creditor. I am unable to alter the view with regard to the scope of this section which I have already expressed. I think the order made is ultra vires, and I cannot therefore endorse it.