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In re
 R. J. Abraham. and I think that, to carry out this object, it is the duty of this Court to be forward in lending its assistance to back any Mofussil process that may be presented to it; and I would, therefore, strive to make the act of the Judge as ministerial as possible, and would never refuse to endorse except on grounds that appear to me irresistible." In the latter case it is true the same learned Judge held that the endorsement by Queen's Judges is judicial and not ministerial, but that this was concurred in by Yardley, J., seems doubtful; and it was said to be opposed to an opinion of the then Chief Justice of Calcutta, Sir Lawrence Peel.

Without deciding whether the act of endorsement is a purely ministerial duty or not, we consider that no objection to the legality of the order has been shown, and we therefore decline to interfere.

Petition rejected.

Sept. 2.

Civil Petition.

Mahashankar Harishankar *Petitioner.*
 Valibhai Umanji *et al* *Opponents.*

*Extraordinary jurisdiction—Regular Suit—Reg. II. of 1837,
 Sec. 5—Civ. Proc. Code, Secs. 270, 271.*

In cases not appealable the High Court will not usually interfere in the exercise of its extraordinary jurisdiction where the petitioner applying has his remedy by regular suit.

This was a petition against an order made by the Acting Senior Assistant Judge at Broach in Miscellaneous Appeal No. 3 of 1869, rejecting an appeal from an execution order made by the Munsif of Broach.

The petitioner obtained two decrees against one Pai Raja in the Sadr Amin's Court at Broach, and applied for the execution of his decrees out of the balance of the proceeds of the sale of Bai Raja's *bhag*, after satisfying the claim of an attaching creditor, Parshotam Bhaishankar, who had obtained a decree against the said Bai Raja in the Court of the Munsif of Broach, and had caused the said property to be attached and sold on the 10th of November 1866.

The Sadr Amin accordingly sent a notice to the Munsif's Court for execution. Six other decrees had been obtained against the same Bai Raja in the Court of the Munsif, and the decree-holders had applied for their execution, and attached the said *bhag* on the 3rd and 21st of October 1868, before the petitioner, Mahashankar, sued out execution in the Sadr Amin's Court upon the balance of the proceeds of sale after satisfying Parshotam Bhaishankar's claim.

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The Munsif made an order that Parshotam Bhaishankar's claim should be first satisfied out of the proceeds of the sale; that, after him, the six creditors should divide the proceeds rateably among themselves, as their attachment of the said property was made previous to that of Mahashankar; and, lastly, that the petitioner should, as desired by him, take the surplus, if any.

Against this order the petitioner appealed to the Judge, on the ground that Sec. 271 of the Code of Civil Procedure provided that all persons applying for the attachment of property already attached should receive rateably the balance which might remain after satisfying the original attaching creditor's claim.

The Judge disposed of the appeal on the preliminary point that the law allowed no appeal in such matters between rival decree-holders, and accordingly rejected the appeal. Against this order of the District Court, the present petition was presented, and was heard by WARDEN and LLOYD, JJ.

Dhirajlal Mathuradas for the Petitioner: There is no ground for the distinction made by the Munsif between the petitioner who applied for execution on the surplus of the proceeds of sale, and the six decree-holders who attached the property, which had been previously attached by Parshotam Bhaishankar. This distinction may have existed under the old law (Reg. IV of 1827, Sec. 68), but there is no foundation for it under Sec. 271 of the Civil Procedure Code. By that section the original attaching-creditor alone has priority. The order of the Munsif works a great injustice, and on the ground the petitioner applies to this

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Court to exercise its extraordinary jurisdiction. It may be the Judge could not interfere under Sec. 11 of Act XXIII. of 1861, as this was not a question between the parties, But referring the petitioner to a regular suit is, in many cases, a denial of justice.

Nanabhai Haridas for the opponents : This is a question between rival decree-holders, and not a matter arising between the parties to the suit, and therefore no appeal lies from the order of the Munsif under Sec. 11 of Act XXIII. of 1861. In the case of *Ramchandra Narayan v. Bholagir*, Ramchandra Narayan, and Bholagir were creditors of the estate of Hunt, Monet & Co., and had obtained decree, and attached the property of the insolvent firm; the Court paid over to Bholagir money due to Ramchandra. On appeal to the Judge of the Puna District, he held that no appeal lay in such matters, and the High Court declined to interfere. There are, besides, Full Bench rulings of the Calcutta High Court to the same effect (b). This Court has, under Reg. II., Sec. 5, a power to call for papers and proceedings from subordinate Courts, but it cannot interfere in the exercise of its extraordinary jurisdiction in cases where no appeal is allowed by law, and the remedy of an ordinary suit is open to the parties injured. There is not in this case such a failure of proper redress as would constitute a good ground for the exercise of the extraordinary jurisdiction of this Court.

PER CURIAM :—As this is a contest between rival decree-holders, and not a matter between the parties to the suit, this Court will not exercise its extraordinary jurisdiction, for the petitioner can bring a regular suit against the other decree-holders. We accordingly reject the petition.

Petition rejected.

(b) See 6 Cal. W. Rep. Civ. R. 224, 514.