

## APPELLATE CIVIL.

( 21 )

*Before Mr. Justice Melvill and Mr. Justice West.*DAMODAR PARSOTAM, PLAINTIFF, v. ISHVAR JETHA,  
DEFENDANT.\*1878  
December 17.*Execution—Bailiff—Nazir—Breaking open the outer door and inner door of a house, shop and room—Civil Procedure Code, Section 271.*

A bailiff or *narir* has authority to break open the door of a shop in order to execute a writ of attachment, the previously existing law on the subject not being altered by section 271 of the new Code of Civil Procedure (Act X of 1877.)

THIS was a reference by Khan Bahadur C. M. Cursetji, Judge of the Court of Small Causes at Ahmedabad, who stated the facts and question for decision as follows:—

“In the suit above noted, order for attachment, before judgment, of defendant’s moveable property having been issued (under section 484 of the Civil Procedure Code), the plaintiff applies that the *nazir* of the Court should break the outer door of a shop of the defendant’s, in order to get at the goods.”

No one was instructed for either party ; but, as *amici curiæ*.

*Ghanasham Nilkanth* argued for the plaintiff and *Shantaram Narayan* for the defendant.

MELVILL, J.—Section 271 of Act X of 1877 provides that “if the person executing any process under this Code, directing or authorizing seizure of moveable property, has gained access to a house or other building, he may unfasten and open the door of any room in which he has reason to believe any such property to be.” We are asked to infer, from the expressed authority to open an inner door, that a bailiff is prohibited from breaking open the outer door, of any building. But we do not feel ourselves constrained to draw this inference. When Act X of 1877 was passed, it was settled law in this country that, although a bailiff might not break open the outer door of a dwelling-house, he might break open the door of a shop or godown: *Bai Kuvar v. Venidas*, (1) *Sodamini Dosi v. Jageswar Sur*. (2) In the former of these two cases the Chief Justice of this Court expressed an

\* Small Cause Court Reference, No. 13 of 1878.

(1) 8 Bom. H. C. Rep. 127, A. C. J.

(2) 5 Beng. L. R. Ap. 27 ; S. C. 13 Calc. W. R. 339.

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opinion that legislation was desirable in the direction of enlarging, not of restricting, the powers of bailiffs in this respect. It is to be presumed that the decisions of the High Courts are perused and considered by the Legislature when legislating on the subjects to which those decisions relate. It may, therefore, be presumed that, if the Legislature were dissatisfied with the view of the law expressed by the Courts on any subject, it would express its own view on the subject in plain terms, and would not leave the Courts to draw dubious inferences of intention from the silence of the Legislature in the matter. Now, section 271 is silent as to the power of a bailiff to break open an outer door; and we think that the inference to be drawn from that silence is, that the Legislature, being aware that the law on that subject had been practically settled by the decisions of the Courts, did not think it necessary to express its own view on the matter. On the other hand, the Legislature may have thought that it was not yet settled whether the prohibition against opening the outer door of a house extended to the opening of an inner door, and it may, therefore, have appeared to the Legislature desirable to state definitely the law upon that subject. It is possible, also, that the principal object of section 271 was to introduce the proviso contained in the second paragraph (which is certainly new law,) and to oblige bailiffs to show due respect to the custom of the country in regard to the privacy of certain apartments. But all this is mere conjecture. It is sufficient to say that, on a point on which the law has been long settled, we do not feel bound to hold that that law has been abrogated, unless the intention to abrogate it is expressed in clear terms, or is to be deduced from expressed terms by a necessary inference.

Our answer to the question of the Small Cause Court Judge is, that the previously-existing law on the subject is not altered by section 271 of Act X of 1877, and that a bailiff has authority to break open the door of a shop in order to execute a writ of attachment.