

1864.  
Oct. 12.

*Special Appeal No. 139 of 1864.*

W. D. DI'KSHI'T.....<sup>5</sup>.....*Appellant.*  
B. V. DI'KSHI'T.....*Respondent.*

*Small Cause Court—Question of Title—Special Appeal.*

Where a suit appears from the plaint to be one of the nature cognisable in a Court of Small Causes, but a question of title has been gone into and decided by the District Court in appeal, a special appeal will lie.

**T**HIS was a special appeal from the decision of A. St. J. Richardson, District Judge of Ahmednagar, in Appeal Suit No. 239 of 1863.

At the hearing a preliminary objection was taken under Sec. 27 of Act XXIII. of 1861, on the ground that the suit was one of the nature cognisable by a Court of Small Causes, under Act XLII. of 1860.

PER CURIAM (ARNOULD, Acting C.J., FORBES and NEWTON, JJ.) :—In this suit the plaintiff seeks to recover a share of one-half of an annuity obtained by the common ancestor of both the parties, laying his claim at Rs. 259-9-1. The Court below in appeal went into the question of plaintiff's title. Under these circumstances we are of opinion that the objection now raised cannot be maintained; for, though the suit appears from the plaint to be one of a nature cognisable in a Court of Small Causes, a question of title has in fact been gone into and decided by the District Court in appeal.