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tenant, always a tenant, is the rule; and, unless there is evidence of a lease, the proprietor can oust after due notice. With regard to the objection about the want of notice, it was not urged below, and on referring to the exhibits we find that the defendants admit receipt of a notice. We are of opinion, therefore, that no presumption arises in this case of a perpetual tenancy; and we confirm the judgment of the court below.

Decree affirmed with costs.

Sept. 13.

Referred Case.

VENKA'JI LAKSHMAN DESHPA'NDE .....*Plaintiff.*
YAMUNA'BA'I, wife of Bháskarráv Deshpánde.....*Defendant.*

Jurisdiction—Small Cause Court—Hakwartana *Allowance.*

A suit by an alleged sharer in a *hakwartana* allowance to recover from the defendant, who received the whole of such allowance from Government, the plaintiff's share in it, was *held* not to be a suit cognisable by a Court of Small Causes.

CASE referred for the decision of the High Court by Trimalráv Vyankatesh, Judge of the Court of Small Causes at Hublí, under Sec. 22 of Act XI. of 1865:—

"Venkáji Lakshman brought this suit to recover from Yamunábái a fifth-share of a *hakwartana* allowance belonging to the *deshpánde watan* of their joint family, which fifth-share the plaintiff alleged he had received down to the year 1867-68, when the defendant, Yamunábái, in whose name the *watan* was entered in the Government books, as the head of the family, refused to pay the plaintiff his fifth-share of the allowance. The *hakwartana* allowance was payable by Government to the Deshpánde family. Down to the year 1867-68 the officers of Government deducted the amount of the allowance from the *judi* payment due from the members of the family, for the lands in their possession; but in that year the old practice was discontinued, and the Government paid the allowance to the defendant, who refused to pay to the plaintiff his fifth-share.

"The defendant answered that there was nothing due to the plaintiff, and that no share of the *hakwartana* allowance had ever been paid to him.

"I found, on the evidence of attested extracts from the general statements in the Dhárwár Collector's office, that the plaintiff's name is entered as a holder of a fifth-share of the *hakwartana* allowance standing in the name of the Deshpánde family. From the extracts of Government accounts it appears that the entire allowance has been paid to the defendant, in whose name the *watan* is entered in the Government books. From the evidence of witnesses who are members of the family, and who represent, along with the plaintiff and defendant, the five sharers in the *watan*, it appears that the family was divided long ago; that the allowance had been in former years deducted from the *judi* payment due for the lands in the possession of the family; and that in 1868-69 the entire allowance was paid by the Government to the defendant, Yamunábái, who had paid over to three of the sharers the shares due to them, but had not paid to the plaintiff his fifth-share of the allowance.

"Upon these facts I decreed for the plaintiff.

"The defendant's *vakíl* applied for a new trial, on the ground that Government had, since the institution of the suit, settled with the defendant, and fixed a cess of six annas in the rupee on the land, and had issued a *sanad* to the defendant; that the allowance was of the nature of immoveable property, and the suit was, therefore, one not cognisable by a Court of Small Causes, in accordance with the decision in Special Appeal No. 804 of 1865.

"Upon these grounds a new trial was granted.

"As regards the preliminary objection upon the point of jurisdiction, I am of opinion that the present suit is cognisable by a Court of Small Causes, and the decision in Special Appeal No. 804 of 1865 does not apply.

"Venkáji does not sue Yamunábái to establish his right to a fifth-share of the allowance as heir to any deceased member of the family. He seeks only to recover a fifth-share of

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a money allowance received by the defendant, not on her own account alone, but on account of all the sharers. He seeks to establish no new right which did not exist before, but simply to recover for the year 1868-69 what he had been receiving ever since 1851 to 1867-68. Moreover, no service has to be performed for this allowance; it is free from service, a money payment being made to Government in lieu of service.

"I submit this question of jurisdiction for the opinion of the High Court."

The reference was considered by GIBBS and MELVILL, JJ.

PER CURIAM:—The money claimed is not due on a bond or other contract, and it was decided in the case of *Keshavbhat* v. *Bhágirathibái*, S. A. No. 804 of 1865 (*a*), that "personal property," as used in Sec. 6 of Act XI. of 1865, must be limited to chattels moveable, and does not include claims to money other than those which are distinctly specified in the statute. The Court concurs in that decision, and is of opinion, on the above grounds, that this claim is not cognisable by a Court of Small Causes.

(*a*) 3 Bom. H. C. Rep., A. C. J. 75.

Sept. 20.

Referred Case.

VITHOBA' valad UKBA *et al.* .....*Appellants.*
CHOTA'LA'L TUKA'RA'M .....*Respondent.*

Mortgage—Destruction of Property mortgaged—Liability of Mortgagor—Hindú Law.

By the Hindú, as well as by the English, law, a creditor in whose hands a pledge has accidentally perished, is notwithstanding entitled to recover his debt, in the absence of an agreement to the contrary.

CASE stated for the decision of the High Court, under Sec. 28 of Act XXIII. of 1861, by Satyendra Náth Tagore, Assistant Judge of Khándesh:—

"The plaintiff brought this action to recover Rs. 150, payable under a mortgage bond dated the 14th of November