

the consequences of a falling market, it was held that the defendant's letter was for a single cargo of five hundred tons in a single ship; and that, the order being unambiguous, the custom or course of business at the Mauritius could not affect the construction to be put upon it; and that the plaintiff's purchase and shipment of four hundred tons were not in compliance with that order. The judgment of the Court of Queen's Bench was, therefore, reversed, and judgment entered for the plaintiff.

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In the present case we must reverse the judgment of the District Judge, and disallow the claim against the appellant, with costs on the respondent throughout.

Decree reversed.

Special Appeal No. 538 of 1870.

Feb. 6.

KHANDU valad KERU *et al.* *Appellants.*
 TA'TIA' valad VITHORA' *Respondent.*

Small Cause Court—Question of Title—Special Appeal.

A suit to recover the price of the skin and flesh of an ox, brought by a Mâhâr who asserted an hereditary right to carry away dead animals of the village to which he belonged, and take their skins, is a suit for damages, and cognisable by a Court of Small Causes.

Although a question of title be incidentally gone into in such a suit, no special appeal lies, under Sec. 27 of Act XXIII. of 1861.

A decree passed in a suit of this nature is not a bar to a suit for a general declaration of title.

THIS was a special appeal from the decision of A. Bosanquet, Judge of the District of Ahmednagar, in Appeal Suit No. 333 of 1869, confirming the decree of the Subordinate Judge of Karâd.

The plaintiffs brought this action in the Court of the Subordinate Judge of Karâd to recover Rs. 6, being the price of the skin and flesh of an ox belonging to the defendant, Tâtiâ, which died on the 23th of January 1869. The plaintiffs alleged that they, being the hereditary Mâhârs of the village of Koregân, were entitled to carry away dead animals

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and take their skins. The defendant caused the ox to be carried away by the *Mángs*, and himself took the skin.

The defendant denied the plaintiffs' right.

The Subordinate Judge rejected the plaintiffs' claim, and the District Judge, in appeal, confirmed the decree of the Subordinate Judge.

A special appeal having been preferred to the High Court and registered, it was set down for hearing before LLOYD and KEMBALL, JJ.

Bahiravnáth Mangesh (for *Dhirajlál Mathurádás*, Government Pleader) appeared for the appellants.

Shivshankar Govindrám for the respondent.

Shivshankar Govindrám objected that no special appeal lay in the case, as the suit was one cognisable by a Court of Small Causes.

Bahiravnáth Mangesh, *contra*:—The suit is not one cognisable by a Court of Small Causes, and even if it is, a special appeal will lie, as a question of title has been inquired into: *Dikshít v. Dikshít (a)*. That was a decision of three Judges, and must either be followed, or overruled by a Full Bench. The subsequent ruling in *Ratanshankar v. Gulábshankar (b)*, being passed by two Judges, is of inferior authority. [LLOYD, J., referred to *Roghhooram v. Ramchunder (c)* and *Godji v. Chokha*, Special Appeal No. 1 of 1868, and said that a Small Cause Court could go into a question of title incidentally.] A Small Cause Court can go into a question of title in cases of trespass, but not in other cases.

PER CURIAM:—The Court is of opinion that this is a claim for damages, and, therefore, cognisable by a Court of Small Causes, and that, though the question of title has been incidentally inquired into, no special appeal lies: Sec. 27 of Act XXIII. of 1861. This decision will not be a bar to the plaintiffs' bringing a suit for a general declaration of their title.

Special appeal dismissed with costs.

(a) 2 Bom. H. C. Rep. 4. (b) 4 Bom. H. C. Rep., A. C. J. 173.
 (c) Calc. W. Rep., Special No., F. B. 127.