

1872. out of three villages, seven years' arrears, due previously to
 CHAKU M. the filing of the plaint, were awarded with interest by the
 ISA'NA' Lower Courts. The High Court varied that decree so far as
 DULLABI it granted interest, which it refused to allow, Couch, C.J.;
 DWA'RKA' saying that "there is no law which enabled the Lower Courts
 to award interest" in such a case.

Damages for mesne profits are not a debt or sum payable at a certain time, nor has any demand, in writing, of payment of mesne profits been proved to have been made: this case, therefore, does not come within Act XXXII. of 1839 (l).

We have arrived without doubt at the conclusion that interest was improperly awarded in the Courts below—by the Subordinate Judge at 6 per cent., and by the Assistant Judge at 9 per cent. We hold that interest at any rate whatever cannot be allowed in such an action as the present, brought, as it is, to recover mesne profits and interest only.

[APPELLATE CIVIL JURISDICTION.]

Feb. 19.

Miscellaneous Special Appeal No. 30 of 1871.

YENKOBA' BA'LSHET KA'SA'R..... *Appellant.*
 RAMBHA'JI valad ARJUN *Respondent.*

Jurisdiction—Decree for sale of mortgaged property out of jurisdiction
—Civ. Proc. Code, Sec. 5.

A suit for the recovery of a mortgage debt by the sale of the mortgaged property is not a suit for land within the meaning of Sec. 5 of the Code of Civil Procedure.

A Court may decree the sale of mortgaged immoveable property though situate beyond its jurisdiction.

THIS was a miscellaneous special appeal from an order of A. C. Watt, Acting Judge of Khandesh, confirming an order of the Subordinate Judge of Amalnair, refusing to execute a decree.

(l) See *Harper v. Williams*, 4 Q. B. 219; 12 L. J. Q. B. 227.

The plaintiff brought a suit in the Court of the Subordinate Judge at Erandol upon a mortgage bond for Rs. 1,000, which amount, with interest and costs, he sought to recover from the defendant personally, and, in default of payment by the defendant, by a sale of the mortgaged property. The property mortgaged was situated within the jurisdiction of the Subordinate Judge of Amalnair. The Erandol Subordinate Judge decreed that the plaintiff should recover from the defendant Rs. 1,738-13-7, and that if the defendant did not pay that amount, the plaintiff should realize the same by the sale of the mortgaged property. On an application for execution of this decree coming on before the Amalnair Subordinate Judge, he was of opinion that the Erandol Subordinate Judge had no jurisdiction to order a sale of immoveable property not situated within the limits of his jurisdiction. In appeal, Mr. Watt was of the same opinion. He, therefore, confirmed the order refusing execution.

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YENKOBA'
B. KA'SAR
v.
RAMBHAI
valad
ARJUN.

The special appeal was heard by GIBBS and MELVILL, JJ.

V. N. Mandlik, for the special appellant:—This is not a suit for immoveable property. All the cases bearing upon this subject are cited in the 4th edition of Broughton's Commentaries on the Code of Civil Procedure, under Section 5, and support my contention.

Pándurang Balibhadra, for the special respondent.

PER CURIAM:—We think that this is not a suit for land within the meaning of Section 5 of Act VIII. of 1859. Comparing that section with Sections 223 and 224 of the Code, we think that a suit for land is a suit which asks for delivery of the land to the plaintiff. We may observe that the Court of Chancery, though it has no power directly to affect property situate out of the bounds of its jurisdiction, and will not therefore try the validity of a will of land in the Colonies though made in England: *Pike v. Hoare* (a), nor entertain a bill of partition: *Archer v. Preston* (b), yet will order the sale of an estate in the Colonies, in order to realize a sum of money charged upon it: *Gascoigne v.*

(a) 2 Eden 182.

(b) I. Eq. Abr. 133.

1872. *Douglas (c)* and *Noel v. Robinson (d)*. We reverse the orders of the Courts below, and direct that the Subordinate Judge of Amalnair dispose of the application for execution according to law with reference to this judgment.

YENKORA'
B. KA'SAR
v.
RAMBHAJI
valad
ARJUN.

Order accordingly.

[INSOLVENT DEBTORS' COURT.]

Feb. 21.

In re N. D. COORLAWALLA.

Indian Insolvent Act, Secs. 47, 50, and 60—Personal discharge under Sec. 47—Subsequent inquiry under Sec. 60—Evidence—Imprisonment of Insolvent under Sec. 50.

An insolvent, whose personal discharge has been opposed under Sec. 47 of the Indian Insolvent Act, can be again opposed by the same creditor, and on the same grounds, when he applies for an absolute discharge under Sec. 60.

The order made on the hearing of the petition under Sec. 47 of the Act can be used as evidence against the insolvent when applying for his discharge under Sec. 60, provided that such order clearly states the offences established against the insolvent.

An insolvent by being punished under Sec. 50 of the Act does not thereby cease to be liable in respect of such offences when he applies for his discharge under the 60th Section.

The discharge under Sec. 60 of an insolvent who has already obtained his discharge under Sec. 47 is not as of course, but will depend upon the general conduct of the insolvent both before and subsequent to his obtaining his discharge under Sec. 47.

THE facts of this case appear fully in the judgment of the Court.

The petition of the Insolvent came on for hearing before Gibbs, J., on the 20th of December 1871 and the 10th of January 1872.

Marriott, for the opposing creditors.

The Insolvent in person.

Cur. adv. vult.