

## [APPELLATE CIVIL JURISDICTION.]

*Miscellaneous Special Appeal No. 6 of 1873.*1873.  
July 7.

HANMANTRA'V KHANDERA'V .....Appellant.

BHAVA'NRA'V BA'JIRA'V .....Respondent.

*Deshmukhi allowances—Life Interest—Liability to attachments.*

As the holder for the time being of a *Deshmukhi Watan* (an hereditary office) has only a life interest in the allowances pertaining to that *Watan*, such allowances, accruing due subsequently to his death, cannot be attached as part of his estate.

THIS was a miscellaneous special appeal from the order of E. Cordeaux, Senior Assistant Judge of the District of Poona, at Sholapur, confirming an order of the Subordinate Judge of Bārsi.

The facts of the case are these :—

The plaintiff sued the defendant, as his deceased father's representative, to recover a sum of money due to him upon an agreement entered into between Bājirāv and Khanderāv, the fathers, respectively, of the plaintiff and the defendant; and obtained a decree directing that the defendant should pay the amount due to the plaintiff, but that if the defendant should fail to do so, the plaintiff's claim should be satisfied from the estate of the defendant's deceased father, Khanderāv. In execution of this decree, the plaintiff attached certain *Deshmukhi* allowances, in the hands of the Collector, which had accrued due subsequently to Khanderāv's death. The defendant contended that the allowance was not liable to attachment under the Pensions Act (XXIII. of 1871). This contention was overruled by the Courts below and the attachment was allowed to continue.

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

*Dhirajlāl Mathurádás*, Government Pleader, for the appellant.

*Shántárám Náráyan* and *Pándurang Balibhadra* for the respondent.

1873. PER CURIAM :—By the terms of the decree, the plaintiff is  
 HANMANTRA'V authorized, in the event of non-payment by Hanmantráv,  
 KHANDERA'V to take out execution against the estate of the deceased  
 v. Khanderáv. Under this decree, he has attached, in the  
 BHAVA'NRA'V hands of the Collector, allowances accruing due, subsequently  
 BA'JIRA'V. to Khanderáv's death, to Hanmantráv, the present holder  
 of the *watan*. These allowances can, in no case, be held to be  
 the property of the deceased Khanderáv who had only a life  
 interest in the *watan*\*. It may be that the decree does not  
 give to the plaintiff all to which he is entitled, or all which  
 it was intended to give; but the Court cannot, in execution,  
 look beyond the terms of the decree, and these terms do not  
 authorize the attachment of the *watan*.

The orders of both Courts below are reversed, and the at-  
 tachment ordered to be raised. Costs on Bhavánráv.

*Order accordingly.*

\* See, Reg. XVI. of 1827, Sec. 20, cls. 1 and 2; *Kunialal v. Wiswas-  
 rav*, Morris Part III. p. 4; \**Krishnarav v. Rangrav* 4 Bom. H. C. Rep.  
 12, 13, A. C. J.; West and Bühler Bk. II., Cap. III., Sec. 4, Question  
 3, (p. 52).—Ed.

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 379 of 1872.*

June 18.

NASIR BIN ABDUL HABIB FAZAL. *Plaintiff and Appellant.*

DA'YA'BHA'I ITCHA'CHAND... *Defendant and Respondent.*

*Banker and Customer—Principal and Agent—Limitation—Act XIV. of  
 1859, Sec. 1, cl. 9.*

A deposited certain moneys with B, a banker, and drew against them,  
 but not to the full extent; the residue was employed on A's account by  
 B, according to an agreement between them.

*Held* that, besides the ordinary relation of banker and customer, there  
 subsisted also between them that of principal and agent; that, there-  
 fore, the right of action arose at the time of demand. *Held* also that a  
 three years' limitation applied under Act XIV, of 1859, Sec. 1, cl. 9.