

customer. The case of *Topham v. Braddick* (j), which has frequently been relied on in more recent cases, establishes clearly that where such a relation and such a right subsist, "a demand must be either proved or presumed in order to give the plaintiff a cause of action." The demand, in this case, was made, as the District Judge says, and the consequent right of action arose within three years before the institution of the suit. The claim was not barred, and the decrees of the Courts below, on that point, being reversed, the cause must be remanded for retrial on its merits.

Costs to follow the final decision.

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 95 of 1873.*

RA'MCHANDRA BHIKA'JI.....*Appellant.*  
THE COLLECTOR OF RATNAGIRI .....*Respondent:*

July 21<sup>st</sup>

*Jurisdiction of Small Cause Court —Special Appeal—Sec. 27 of Act XXIII. of 1861—Act XIV. of 1869, Sec. 32.*

A suit to recover less than Rs. 500, levied as assessment by Government officials, is cognizable by a Court of Small Causes; and, therefore, under Sec. 27 of Act XXIII. of 1861, no special appeal lies.

District Judges should, ordinarily, try such suits when brought in the District Court, and should not delegate the trial to their Assistants.

THIS was a special appeal from the decision of H. Birdwood, Acting Judge of Ratnagiri, in appeal, affirming the decree of H. J. Parsons, Assistant Judge in the same place.

This action being against the Collector of Ratnagiri, in his official capacity, was instituted in the Court of the District Judge, under Sec. 32 of Act XIV. of 1869. The District Judge, however, referred it to the Assistant Judge for trial. Both the Courts having thrown out the plaintiff's claim, a special appeal was preferred to the High Court against the decree of the District Court in appeal.

(j) 1 Taunt. 572

1873  
NASIR BIN  
ABDUL HABIB  
FAZAL  
v.  
DA'YA'AHAI  
ITCHA'CHAND.

1873. The appeal was heard before WESTROPP, C.J., and NA'NA'-  
 RA'MCHANDRA BHA'I HARIDA'S, J.  
 BHKA'JI  
 v.  
 COLLECTOR OF  
 RATNAGIRI.

*Vishvanáth Náráyan Mandlik* for the appellant.

*Dhirajlál Mathurádás*, Government Pleader, for the Collector of Ratnagiri, took a preliminary objection that, under Sec. 27, Act XXIII. of 1861, no special appeal could lie in the present case. He cited Special Appeal 402 of 1872 decided by SARGENT and PINNEY, JJ., on the 19th July 1873.

WESTROPP, C.J. :—This is a suit to recover the assessment Rupee 1-1-6 (with interest), wrongfully, as the plaintiff avers, levied by the defendant, the Collector of Ratnagiri, from the plaintiff's land, under circumstances which it is unnecessary for the purposes of this judgment to state. The Government Pleader on behalf of the defendant objects, under Sec. 27 of Act XXIII. of 1861, that a special appeal does not lie in such a case, the suit being "of the nature cognizable in a Court of Small Causes" under Act XI. of 1865 (substituted by its 2nd and 50th sections for Act XLII. of 1860), and the damage or demand being under Rs. 500. Act XI. of 1865 contains no provision so extensive as Sec. 32 of Act XIV. of 1869, which prohibits Subordinate Judges from receiving or registering suits in which Government, or any officer of Government in his official capacity, is a defendant. The 9th and 10th sections of Act XI. of 1865, relate to suits against local Governments, the Government of India, or the Secretary of State only, and not to officers of Government. The only exception to the jurisdiction of Small Cause Courts, relating to Revenue Officers, is the 4th exception, contained in Sec. 6. It is as follows: "For any claim for the rent of land or other claim for which a suit may now (see Bombay Act II. of 1866, Sec. 2) be brought before a Revenue Officer unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the local Government with jurisdiction over claims to such arrears." That clearly does not apply to such a case as the

present. We are unable, therefore, to say that this action, being brought to recover money alleged to have been received by the defendant to the use of the plaintiff, or damages in respect of an assessment alleged to have been wrongful, does not fall within the description given in the commencement of the 6th Section of "suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract, &c., &c., or for damages when the debt, damage, or demand, does not exceed in amount or value the sum of Rs. 500."

1873.

RA'MCHANDRA  
BHIIKA'JI  
v.  
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RATNAGIRI.

We must, therefore, dismiss this special appeal with costs, expressing, however, our opinion that it would be desirable that there should be a provision with regard to Courts of Small Causes similar to that in the Bombay Courts Act XIV. of 1869, Sec. 32, above mentioned; and, further, that we think that it would be a suitable exercise of the discretion vested in District Judges, that they themselves should, ordinarily, try such suits as this, when brought in the District Court, and not delegate them to their Assistants. We may mention here that, in Special Appeal 402 of 1872, which was an action by the present plaintiff against the Collector of Ratnagiri, in respect of moneys alleged to have been wrongfully levied by the latter from the former, in respect of the costs of boundary marks, the amount claimed being under Rs. 500, Sir C. SARGENT and PINHEY, JJ., held that a special appeal would not lie.