

## [APPELLATE CIVIL JURISDICTION.]

1873,  
July 29.*Referred Case.*

DESA'LJI MANA'JI ..... *Plaintiff.*  
HEMADA'LLI IMA'M HAIDARBAKSHA ..... *Defendant.*

*Jurisdiction of a Mofussil Small Cause Court over an officer of Government—“Local Government”—Act XIV. of 1869, Secs. 1 and 9.*

A suit, within the pecuniary and other limits prescribed for Courts of Small Causes, in which an officer of Government is a party, in his official capacity, may be entertained by a Court of Small Causes in the Mofussil.

The phrase “Local Government” used in Sec. 9, and defined in Sec. 1, of Act XI. of 1865 does not apply to the Collector of a District, but rather to the Governors, or Lieutenant-Governors of Presidencies, or Commissioners of Provinces.

THIS was a reference by the Judge of the Small Cause Court at Ahmadabad, submitting for the decision of the High Court the question—

“Whether or not a suit is maintainable in a Mofussil Small Cause Court against a Government officer in his official capacity?”—

The Judge answered the question in the affirmative for the following reasons:—

“The defendant died after the suit was filed. The plaintiff has applied that the Collector, who has been appointed guardian of the deceased’s son Musá Miyá, a minor, should be made a defendant.

“I have up to this time rejected suits against Government servants in their official capacity, thinking that such suits are maintainable in the District Court under Sec. 32 of Act XIV. of 1869. But now it appears to me that such suits are under the cognizance of a Mofussil Small Cause Court for the following reasons:—

“Sec. 9 of Act XI. of 1865, states that ‘suits against the local Government, or against the Government of India, shall be brought in the Court having jurisdiction in the place

which is the seat of such Government;’ according to the interpretation given in Sec. 1 of the same Act, the Court means a Court constituted under this Act, *i.e.*, a Mofussil Small Cause Court, and local Government denotes ‘the person authorized to administer the executive Government in such part.’ The Collector may come under the above definition, and his chief seat, Ahmadabad, is within the jurisdiction of this Court. If by the word ‘seat,’ the Presidency towns only are meant, then this section will have no meaning, as no Mofussil Small Cause Court has jurisdiction over the Presidency towns, there being Presidency Small Cause Courts constituted under another Act.

“Sec. 32 of Act XIV. of 1869 can be reconciled with this view. The preamble to that Act states that it is for ‘the District and Subordinate Civil Courts in the presidency of Bombay.’ It gives the organization and jurisdiction of such Courts, but is silent as to Small Cause Courts. By Sec. 32 no Subordinate Judge, appointed under the Act, is to receive or register a suit in which Government or any officer of Government, in his official capacity, is a defendant. Such suits are to be instituted in the District Judge’s Court alone. No mention is made here about a Small Cause Court, nor is the provision regarding suits against local Government contained in the Small Cause Court Act repealed. By Sec. 12 of Act XI. of 1865, suits cognizable by a Small Cause Court are not to be heard by any other court having jurisdiction within the local limits. The Small Cause Courts have jurisdiction in particular cases, while Sec. 32 of Act XIV. of 1869 is general, and so it is applicable to those cases which do not come under the cognizance of a Small Cause Court.”

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The reference was considered in Court by WESTROPP, C.J., and NA’NA’BHA’I HARIDA’S, J., on the 29th July 1873.

WESTROPP, C.J.:—The High Court is far from certain that the question, submitted to it by the Judge of the Court of Small Causes at Ahmadabad, really arises in this case. It is

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by no means clear that the Collector is sued in his character of officer of Government. The Judge states that the Collector has been made a party to the suit, as guardian of a minor, under Act XX. of 1864, but the Judge does not specify whether the Collector has been so appointed under Secs. 3, 4, and 5, or under Sec. 11 of the Act. Possibly, if he be appointed under Sec. 11 there may be a question whether he should not be regarded as being sued as an officer of Government. However this may be, this Court does not, on the present occasion, object to express its concurrence in the opinion of the Judge, that a suit, (if within the pecuniary and the other limits prescribed for Courts of Small Causes,) in which an officer of Government is a party, may be entertained by a Court of Small Causes in the Mofussil, but this Court is not to be understood as adopting the reasoning upon which the Judge has arrived at that opinion. The Registrar has been requested by this Court to forward to the Judge a copy of the judgment of this Court delivered in *Rámchandra Bhikáji v. The Collector of Ratnagiri (a)*, in which this Court has briefly stated its reasons for holding that a suit, in which an officer of Government is a party, will lie in the Small Cause Court. With respect to Sec. 9 of Act XI. of 1865, this Court, differing with the Judge, thinks that the phrase "Local Government," used there, and defined in Sec. 1 of the same Act, does not apply to the Collector of a district, but rather to Governors, or Lieutenant-Governors of Presidencies, or Commissioners of provinces.

(a) Ante p. 305.