

1874.
 KONA'PA' BIN
 MAHA'DA'PA'
 v.
 JANA'RDAN
 SUKDEV.

The special appeal was argued before WESTROPP, C.J., and KEMBALL, J., on the 21st September 1874.

Shántárám Náráyan for the appellant.

Vishvanáth Náráyan Mandlik for the respondent.

WESTROPP, C.J. :—The sale to the defendant, Konápá, on the 2nd February 1872, though not confirmed until the 8th July 1872, gave him, as against Rávji Jiváji, the judgment-debtor, from the 2nd of February 1872, a contingent right to the land, *i.e.*, contingent on subsequent confirmation. The plaintiff, on the 6th March 1872, purchased only the right, title, and interest of the judgment-debtor, Rávji Jiváji; that right, title, and interest was subject to the defendant Konápá's contingent right, which has since become absolute. Konápá's purchase is, therefore, entitled to precedence over that of the plaintiff. We accordingly reverse the decree of the District Judge, and restore that of the Subordinate Judge, with costs throughout on the respondent.

We are not to be understood as saying that, were the delay in the confirmation of the sale to Konápá to have been accompanied by great lâches on his part, or other special circumstances, the case might not be different. Here there is not any allegation of such lâches or other special circumstances.

Decree reversed.

[APPELLATE CIVIL JURISDICTION.]

October 5.

Special Appeal No. 107 of 1874.

BHIMRA'V JIVA'JI and others... *Plaintiffs and Appellants.*

BHIMRA'V GOVIND..... *Defendant and Respondent.*

Watan—Implied Contract—Small Cause Court—Jurisdiction—Act XI. of 1865, Sec. 6—Extraordinary Jurisdiction of the High Court—Annulment of proceedings before Subordinate Judge and District Judge.

Where a case properly cognizable by a Small Cause Court had been heard and determined by the Subordinate Judge, and in appeal by the District Judge, the High Court, in the exercise of its extraordinary jurisdiction, annulled the proceedings of the two lower courts.

THIS was a special appeal from the decision of N. Daniell, Acting District Judge of Dharwar, in Appeal No. 150 of 1872, reversing the decree of A. M. Cantem, Subordinate Judge at the same place.

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This action was brought by Bhimráv Jiváji and two others, who claimed a refund of Rs. 47 and 8 annas, which the defendant Bhimráv had received from them. They alleged in the plaint that they and the defendant were members of one family, and held a *watan*; that a division having taken place in the family on the 25th December 1857, the members agreed to pay the Government *Judi* due on the *watan* in equal shares; that the name of the defendant was entered in the Government books as *Khátedár*, and that, as such, he was to recover the amount of the *Judi* and pay it to the revenue authorities; and that the defendant received the amount claimed in excess of what was due from the plaintiffs.

The Subordinate Judge awarded the plaintiffs' claim. In appeal, however, the District Judge reversed the decree of the first court, and dismissed the plaintiffs' suit.

The special appeal was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ., on the 5th October 1874.

Girdharlál Dayáldás, for *Dhirajlál Mathurádás*, for the appellant.

Mánikshá Jehángirshá, for the respondent, took a preliminary objection to the hearing of the special appeal, on the ground that the suit having been brought on an implied contract, was one within the cognizance of a Court of Small Causes: *Ratan Shankar Reváshankar v. Gulábshankar Lálshankar (a)*.

Girdharlál Dayáldás, for the appellant, prayed that in the event of the Court holding that the special appeal did not lie, the proceedings of both the lower courts might be annulled on the ground of want of jurisdiction, as there was a Court of Small Causes at Dharwar, so that the plaintiff might bring a fresh suit.

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WEST, J. :—This is plainly a case of what the English law regards as an implied contract, and, therefore, according to the ruling of 10 Bom. H. C. R. 21, one within the cognizance of the Small Cause Court. No special appeal lies in such a case, and we must reject the one now made. But the lower courts had not jurisdiction of the cause, there being a Small Cause Court at Dharwar, to which the cognizance of the case properly belonged; and, in the exercise of the Court's extraordinary jurisdiction, we will annul the proceedings of the Subordinate Judge, and of the District Judge in the original suit and the regular appeal.

Costs on appellants.

[APPELLATE CRIMINAL JURISDICTION.]

July 15.

REG. v. MALA'PA' BIN KAPANA' and others.

Indian Evidence Act, 1872, Secs. 30, 114, 133, and 157—Evidence of accomplice—Corroboration—Confession.

The evidence requisite for the corroboration of the testimony of an accomplice must proceed from an independent and reliable source, and previous statements made by the accomplice himself, though consistent with the evidence given by him at the trial, are insufficient for such corroboration.

The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others.

THIS was an appeal against the convictions and sentences under Sections 302 and 396 of the Indian Penal Code. The four prisoners were tried along with one Parápá by S. Tagore, Joint Session Judge at Kaládgi, for murder and dacoity, and were convicted of both those offences. Parápá was convicted of dacoity only, but did not appeal.

The appeal was heard by NA'NA'BHA'I HARIDA'S and LARPENT, JJ.

Macpherson (with him *Ghanashám Nilkanth*) for the appellants :—The Session Judge has based the conviction of the accused upon the testimony of the approver, Murgíá, and upon the statement of a fellow-prisoner, Parápá. He has used the statements made by Murgíá to his parents and the police to corroborate his evidence at the trial. This he cannot do :