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fact due by the defendant Mancherji Bomanji to the estate of the intestate. This being so, the Court proceeded to pass the ordinary administration decree, but directed that the plaintiff should bear his own costs and pay the defendant's costs of the hearing, except those of the first day, and also all other costs of the suit occasioned by the introduction into the plaint of the matters the subject of the five issues, and reserved the question of the costs of the suit not provided for as aforesaid, and further directions.

[ORIGINAL CIVIL.]

Before Sir M. R. Westropp, Knight, Chief Justice, and Sir Charles Sargent, Knight, Justice.

June 22.

WALJI KARIMJI (PLAINTIFF) *v.* JAGANA'TH PREMJI *et ux.* (DEFENDANTS).*

Jurisdiction—Court of Small Causes (Bombay)—Suit for possession of immoveable property of a value greater than Rs. 500 and less than Rs. 1,000—Act IX. of 1850—Act XXVI. of 1864.

The effect of Section 2 of Act XXVI. of 1864 is to extend the compulsory jurisdiction of the Courts of Small Causes in the presidency towns, in suits to recover property, to cases where the value of the property does not exceed Rs. 1,000.

The Court of Small Causes at Bombay has, therefore, jurisdiction to try a suit for the possession of immoveable property of a value greater than Rs. 500 and less than Rs. 1,000.

Sreemutty Shibosoondary Dossee v. *Táracknáth Pandit* (2 Ind. Jur. 145, *note*) dissented from.

THE following case was stated for the opinion of the High Court, under Section 7 of Act XXVI. of 1864, by J. O'Leary, First Judge, and Gunpatráo Bháskar, Acting Third Judge, of the Court of Small Causes at Bombay.

This was a suit to recover possession of a piece of ground, with a house situate thereon, at Bhandárwádá, outside the Fort of Bombay. See copy summons annexed.(1) The value of the premises exceeded

* Reference from the Bombay Court of Small Causes, Suit No. 14970 of 1870.

(1) The summons called on the defendants "personally to appear, &c., to answer the plaintiff in an action for the recovery of immoveable property, brought against you, to recover possession of all that, &c., of the value of Rs. 1,000, of which you unlawfully and unjustly refuse to give up possession to the plaintiff, whereby the plaintiff, &c."

Rs. 500 but did not exceed Rs. 1,000. The suit was not instituted under Section 91 of Act IX. of 1850 as extended by Act XXVI. of 1864, but was brought under the general power which the Acts of 1850 and 1864 have always been supposed to confer on the court, chiefly on the authority of the case of *Radhamoney* v. *Anundomaye*, decided in 1852 by Sir L. Peel, C.J., and Buller and Colvile, JJ.[1]. Although this case was, of course, only a ruling as to the effect of the Act of 1850, the principles of it have always been considered by the Judges of this Court as applicable to the Act of 1864.

Our attention has been recently called to a reprint of the above-mentioned case,[2] where the date of the decision is, by an obvious misprint, given as 1862, and to a decision of the Calcutta Court of Small Causes, reported in a note thereto, to the effect that this Court has jurisdiction to try suits brought for the recovery of immoveable property, when the value of such property does not exceed Rs. 500, but has no such jurisdiction, whether by consent of parties or not, in cases in which the value of the property exceeds Rs. 500, but does not exceed Rs. 1,000, although in cases where the value exceeds Rs. 1,000 the consent of parties would, under Section 3 of the Act of 1864, clearly give the Court jurisdiction.

The foundation for this alleged diversity of jurisdiction under the two Acts, would appear to be this. Sir L. Peel admitting certain difficulties arising out of the general frame of the Act, held in 1852 that under the words "or value of the property in dispute," in Section 25 of Act IX. of 1850, the Court had clearly jurisdiction to entertain suits for the recovery of immoveable property. Accordingly, the jurisdiction of the Court in cases not exceeding Rs. 500 has never been doubted, so far as we are aware, in Bombay.

The section of the Act of 1864, however, which defines the class of cases in which the Court shall have jurisdiction between

(1) Sm. Ca. Ct. Chronicle, Vol. I., p. 2 (Calcutta, Jan. 1854).

(2) 2 Ind. Jur. 144.

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Rs. 500 and Rs. 1,000, omits those words, and only adds the general word "demand" to the words used in the Act of 1850, thus:

"Act IX. of 1850, Section 25.—All suits, where the debt or damage claimed, or value of the property in dispute, is not more than Rs. 500 * * * may be, &c."	"Act XXVI. of 1864, Section 2.—The jurisdiction of the Courts * * * shall extend to the recovery of any debt, damage, or demand exceeding the sum of, &c."

When, however, the Act of 1864 comes to deal with the cases in which, by consent of parties, the Court can try cases beyond Rs. 1,000 in value, the Act reverts to the language of the Act of 1850, and again uses the words "debt or damage claimed, or value of the property in dispute."(1)

If the view taken by the Judges of the Calcutta Court be correct, the result would appear to be as follows:—

1. According to Sir L. Peel's decision, the Court has, independently of the special powers conferred by Section 91 of Act IX. of 1850, clear power to entertain suits for the recovery of immoveable property not exceeding Rs. 500 in value.

2. The words on which Sir L. Peel chiefly relied as conferring this power, not being contained in the Act of 1864, the Court has no such power where the value of the property exceeds Rs. 500 but does not exceed Rs. 1,000.

3. The same words again occurring in the section of the Act of 1864 which gives the Court jurisdiction, if the parties consent, where the value exceeds Rs. 1,000, the Court would have jurisdiction, by consent, where the value of the property was Rs. 10,000; but no such consent would give jurisdiction if the value of the property was Rs. 750.

The apparent inconsistency involved in this last consideration has always appeared to us almost conclusive as to the intention of the Legislature in the passing of the Act of 1864, namely, that it was to give the Court jurisdiction up to Rs. 1,000, in the same class of suits as those in which it previously had jurisdiction up

(1) Act XXVI. of 1864, Sec. 3.

to Rs. 500; whether this intention has been carried out, is substantially the question we would wish reserved for the opinion of the High Court.

In the case at present under reference the plaintiff was the purchaser, at an auction sale held under a power of sale in a mortgage, of the premises executed by the male defendant. There were several defences on the merits, but they were decided in favour of the plaintiff by the Judge who heard the case, who gave a decree for possession without costs. The defendants moved the Full Court for a new trial, which was refused, and the decree was confirmed, subject to the question: whether the fact that the value of the premises exceeds Rs. 500, but does not exceed Rs. 1,000, deprives this Court of jurisdiction.

Upon which question we, therefore, submit the case for the decision of the High Court.

At the hearing of the reference the parties appeared in person, and the decision of the High Court was delivered by

WESTROPP, C.J.:—The plaintiff, as purchaser at an auction sale, made under a power of sale contained in a deed of mortgage executed by the male defendant Jaganath Premji, of certain land and buildings thereon, brought this suit to obtain (recover) possession of the same premises from the defendants. The Court of Small Causes has made a decree for the plaintiff, subject to the question submitted to this Court: whether the fact that the value of the premises exceeds Rs. 500, but does not exceed Rs. 1,000, deprives the Court of Small Causes of jurisdiction.

That Court has called our attention to *Sreemutty Shibosoondary Dossee* v. *Taracknath Pandit*,[1] decided in the Court of Small Causes at Calcutta, in which case that Court held that its jurisdiction to entertain suits to recover immoveable property, not exceeding Rs. 500 in value, which subsisted under Act IX. of 1850, Section 25, was not extended by Act XXVI. of 1864, Section 2, to immoveable property not exceeding Rs. 1,000 in value. The Bombay Court of Small Causes appears to have hitherto acted upon the opposite view.

(1) 2 Ind. Jur. 145, *note*.

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The Calcutta Court of Small Causes, in order to arrive at an opinion as to the true construction of Act XXVI. of 1864, sought light from the vicissitudes which that measure experienced in the course of its passage as a Bill through the Indian Legislature, but we cannot regard any such inquiry as a legitimate mode of ascertaining the intention of the Legislature. The Calcutta decision is a strong illustration of the danger of such a method, and of the extraordinary conclusions to which it may lead. The Court should resort only to the recognized rules of construction. The Calcutta Court of Small Causes seems to have overlooked (at least it has not mentioned, or, apparently, been guided by) a primary rule for the exposition of statutes, viz., that enactments *in pari materia* should be read together as if they were one law, and interpreted as consistently and harmoniously as their language will fairly admit,—a rule which the Indian Legislature had vividly in its mind when enacting Act XXVI. of 1864, the last (16th) section of which expressly directs that "This Act and the said Act IX. of 1850 shall be read and construed as one Act, as if the several provisions in the said Act contained, not inconsistent with the provisions of this Act, were repealed and re-enacted in this Act." We are clearly of opinion that the word "demand" in Section 2 of Act XXVI. of 1864 must, in conformity with the 16th section of the same Act, as well as in the interests of common sense, and in respect for the Legislature, be treated as including suits for the recovery of immoveable property not exceeding Rs. 1,000 in value. In *Radhamoney Boystomey* v. *Anundomaye Dabey*,(1) Peel, C.J., referring, under the name of "preamble," to the title of Act IX. of 1850, viz., "An Act for the more easy recovery of small debts and *demands* in Calcutta, Madras, and Bombay," said: "The preamble of the Act has been relied on as the key to its exposition. The word 'demands' there might no doubt, on the rule *noscitur a sociis*, be read as demands of the same general nature as 'debts,' which is the word that precedes it: that is, be limited to pecuniary claims. But that rule of construction cannot prevail against the plain language of the Act. Now, all pecuniary demands, which are the subject-matter of an action at law, are either for the recovery of a debt

(1) 2 Ind. Jur. 146.

or for the recovery of damages, and the clause as to jurisdiction contains both these terms; but it also contains a third term in the disjunctive, viz., claims for the recovery of property: that is, demands for the recovery of things *in specie;* and chattels may be recovered *in specie* as well as lands and houses." The words in the general jurisdiction clause (Section 25) of Act IX. of 1850 are "all suits, where the debt or damage claimed, or value of the property in dispute, is not more than Rs. 500;" and it is true that Sir Lawrence Peel, in the judgment just quoted, refers, in aid of his conclusion that Section 25 included demands for the recovery of immoveable property, to the express mention, in that section, of "property" not exceeding Rs. 500 in value, and to the circumstance that no distinction was there taken between moveable and immoveable, or personal and real property. But the mention of property in that section, and the special jurisdiction over houses, lands, and tenements in the case of tenants and occupiers in Section 91 of the same Act, fix upon the word "demands," used in the title of that Act, (and, in referring to it, repeated in the preamble of Act XXVI. of 1864,) a meaning which includes demands for property moveable and immoveable; and the mere circumstance that the words "value of the property in dispute" are omitted in Section 2 of Act XXVI. of 1864, would not justify us in giving to the word "demand", which has been substituted for them, a more limited construction than the same word in the plural certainly bore in the title of Act IX. of 1850, and was, as we have pointed out, placed upon it by Sir Lawrence Peel and his colleagues in 1852. The proposition, that the word "demand" in Section 2 of Act XXVI. of 1864 bears the same meaning as the word "demands" in the title of Act IX. of 1850, is confirmed by Section 3 of Act XXVI. of 1864, although the words "value of the property in dispute" occur in that section; for it is manifest that the Legislature, in enacting, as it did by the 3rd section, that in case of an agreement by the parties, or their attorneys, that the Court shall have power to try any action (not included in the proviso, *i.e.*, amongst the exceptions in Section 25 of Act IX. of 1850), in which the debt or damage claimed, or value of the property in dispute, shall exceed the value of Rs. 1,000, then, and in such case, the Court shall have jurisdiction to try such action, it (the Legislature)

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must have been of opinion that, by using the word "demand" in the 2nd section it had given the Court a jurisdiction in cases of property exceeding Rs. 500 and less than Rs. 1,000, independently of the consent of the parties or their attorneys; for it would be an insult to the common sense of the legislative body to suppose that it had given a compulsory jurisdiction in suits to recover property not exceeding Rs. 500 in value, and a jurisdiction on consent in cases of property exceeding Rs. 1,000 to an unlimited extent, but no jurisdiction whatever, either with or without consent of the parties, where the property exceeded Rs. 500 and did not exceed Rs. 1,000. There really is not the slightest necessity for attributing any such absurdity or oversight to the Legislature. Interpreting the word "demand" in the 2nd section of Act XXVI. of 1864, as co-extensive with the same word in the title of Act IX. of 1850, we effectuate what we have no doubt was the intention of the Legislature, viz., to extend the compulsory jurisdiction of the Courts of Small Causes, in the presidency towns in suits to recover property, to cases where the value of the property does not exceed Rs. 1,000.

We accordingly think that the Court of Small Causes had jurisdiction in this case, and that the decree, made by that Court for the plaintiff, must be upheld.

The parties appeared here in person and not by counsel or attorney. Such costs, however, as there may be of drawing up the reference, and of and relating to our order, must be paid by the male defendant to the plaintiff.

It may be well to mention that, in 1851, Sir Lawrence Peel, C.J., casually expressed an opinion in *Hurrymoney Dossee* v. *Gopaulchunder Mookerjee*,(1) to the same effect as his and his colleague's subsequent positive decision in *Radhamoney Boystomey* v. *Anundomaye Dabey*,(2) that not only was jurisdiction over suits to recover immoveable property not exceeding Rs. 500 in value, conferred by Section 25 of Act IX. of 1850, but also jurisdiction to try the title in such cases. The point actually decided in *Hurrymoney Dossee* v. *Gopaulchunder Mookerjee*,(3) by Peel, C.J., was that the

(1) 2 Taylor and Bell 57, 58.

(2) 2 Ind. Jur. 146.

(3) 2 Taylor and Bell 57.

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Court of Small Causes had not jurisdiction, under Section 91 of Act IX. of 1850, to try a case of pure adverse title between two claimants of the fee in immoveable property exceeding Rs. 500 in value. The defendant in possession there insisted that he was entitled to hold absolutely as heir, while the claimant (the plaintiff and alleged owner) claimed under the defendants' ancestor in virtue of a bill of sale executed by him in his life-time.

Decree affirmed.

[ORIGINAL CIVIL.]

Before Sir M. R. Westropp, Knight, Chief Justice, and Sir Charles Sargent, Knight, Justice.

NOWLA' OOMA' (PLAINTIFF *v.* BA'LA' DHURMA'JI (DEFENDANT).* June 22.

Jurisdiction—Bombay Court of Small Causes—Title to immoveable property—Form of Suit—Practice—Leave to amend Summons—Act IX. of 1850—*Act XXVI. of* 1864.

In a suit brought under Section 91 of Act IX. of 1850, the Bombay Court of Small Causes has no jurisdiction to try a question of adverse title to the immoveable property, the subject of the suit. *Aliter* if the suit be brought under Section 25 of Act IX. of 1850, as extended by Section 2 of Act XXVI. of 1864, and the value of the property in dispute do not exceed Rs. 1,000.

In a case involving a question of adverse title the plaintiff should be allowed to amend the summons issued under Section 91 of Act IX. of 1850, so as to render it conformable with a claim under Section 25 of Act XXVI. of 1864, if the summons were issued in the mistaken form by the faul of the Clerk of the Court, and not of the plaintiff.

THE following case was stated for the opinion of the High Court by J. O'Leary, First Judge of the Court of Small Causes at Bombay, under Section 55 of Act IX. of 1850 :—

This suit was brought by the plaintiff, under Section 91 of Act IX. of 1850, to recover possession of a room in a house. See copy summons annexed.(1)

* Small Cause Court Reference, Suit No. 22943 of 1874.

(1) The summons called on the defendant "personally to appear, &c., to answer to the complaint of Nowla Ooma, the plaintiff above named, of your neglect, or refusal to quit and deliver up to him possession of a room in house, &c., and occupied by you as plaintiff's monthly tenant."