

1878.

DALPATBHAI
BHAGUBHAI
v.
AMARANG
KHEMA'BLAI
AND ANOTHER.

thus deprived of the whole fruits of his litigation. But such seems to have been the deliberate intention of the Legislature. In the draft Bill published in the *Gazette of India* of the 14th October 1876, section 588 gave a right of appeal against all orders under section 244 as to questions relating to the execution of decrees, and the Select Committee reported (page 1209) that this provision had been advisedly introduced. The words of limitation, viz., "of the same nature with appealable orders made in the course of a suit," were subsequently inserted, and apparently without any republication of the section in its altered form. In the draft Bill, referred to this Court for its opinion, the words above quoted found no place. Considering the great importance of these words, and the havoc which they make of previously existing rights of appeal, we cannot help thinking that, if an opportunity of discussing them had been afforded to the public and the Courts, such arguments might have been advanced as would have induced the Legislature to reconsider them. As it is, we have no choice but to give effect to the declared intention of the Legislature; and we accordingly dismiss this appeal with costs.

Appeal dismissed.

[APPELLATE CIVIL.]

Before Mr. Justice Melvill and Mr. Justice Kimball.

March 26.

NURSINGDA'S RUGHUNA'THDA'S (PLAINTIFF) v. TULSIRA'M BIN DOULATRA'M (DEFENDANT).*

Code of Civil Procedure (Act X. of 1877), Section 268—Attachment and sale of bonds—Courts of Small Causes.

Under the provisions of section 268 of the Code of Civil Procedure (Act X. of 1877) bonds cannot be sold till the end of six months from the date of attachment.

A Court of Small Causes cannot appoint a receiver. Bonds, therefore, on which recovery will be time-barred before the date on which a sale can legally be made, cannot be made available for satisfaction of the judgment-creditor's debt.

THIS was a reference by Madan Shrikishnaji, Judge of the Court of Small Causes at Puna. He submitted the case with the following remarks:—

* Small Cause Court Reference No. 1 of 1878.

“The plaintiff in the suit obtained a decree in this Court in his favour on 13th December 1877, and in execution thereof caused certain bonds for money due to the defendant by his debtors, and which were in his (plaintiff's) possession, to be attached on the 18th December 1877, under section 268 of the new Civil Procedure Code. He (plaintiff) now applies to the Court for an order to sell the said bonds, stating that some of them will be barred by the Law of Limitation in a short time.

“The question for decision is,—whether, under the circumstances, the attached bonds can be sold before the expiration of six months from the date of the attachment.

“My opinion is, that they cannot be so sold. Section 268 of the new Civil Procedure Act (last paragraph) provides that ‘no attachment, under this section, shall remain in force for more than six months, at the end of which time, if the judgment-debtor has not obeyed the decree, the property attached may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and pay the balance, if any, to the judgment-debtor on his application.’ The paragraph appears to me to be loosely worded. The first part thereof simply limits the length of the time for which an attachment, under the aforesaid section, can remain in force; but the latter part provides that the Court may sell the attached property, unless the execution defendant obeys the decree within six months from the date of the attachment. If this latter provision be fulfilled by giving the defendant six months' time to obey the decree, the attachment must necessarily remain in force for more than six months; for, if the defendant satisfies the decree even on the last day of the period of six months allowed to him, the Court cannot sell the attached property, and if does not satisfy it, the attachment must, as a matter of course, remain in force for a further period necessary to prepare and publish the proclamation issued under section 287 and also for at least 15 days more from the date on which a copy of such proclamation shall have been affixed in the Court-house. The first part would thus seem to be inconsistent with the latter; but, under the paragraph as it now stands, the Court has no power to sell the said attached bonds for six months from the date of the attachment.

1878.

NURSINGDA'S
RUGHUNA'TH-
DA'S
v.
TULSIRA'M
BIN
DOULATRA'M.

1878.

NURSINGDA'S
RUGHUNA'TH-
DA'S
v.
TULSIRA'M
BIN
DOULATRA'M.

"This will, no doubt, be hard on the plaintiff; for, if the bonds be not sold before the expiration of six months, they may be barred, and nobody would purchase them, and the plaintiff may be deprived of the amount which may now be realized by the sale thereof. This difficulty would not have arisen under the old Civil Procedure Code, for this Court had power to appoint a receiver, who could sue for and recover the debt due on attached documents; but chapter XXXVI of the new Code, which provides for the appointment of receivers, is not made applicable to a Small Cause Court."

No pleader or counsel appeared on either side.

PER CURIAM :—Under the provisions of section 268, the bonds cannot be sold till the end of six months from the date of attachment.

It follows that, as a Court of Small Causes cannot appoint a receiver, any bonds on which recovery will be time-barred before the date on which a sale can legally be made, cannot be made available for satisfaction of the judgment-creditor's debt.

The Code in this respect appears to require amendment.

[APPELLATE CIVIL.]

Before Mr. Justice Melville and Mr. Justice Kimball.

March 26.

CHUNILAL SOBHA'RA'M (PLAINTIFF) v. PURBHUDA'S KURSANDA'S
(DEFENDANT).*

*Code of Civil Procedure (Act X. of 1877), Sections 223 and 648—Arrest—
Courts of Small Causes.*

Section 223 of the Code of Civil Procedure (Act X. of 1877) does not apply to Courts of Small Causes.

Section 648 of the same Act does not apply to a case in which the defendant resides within the same district in which the Court issuing a warrant is situate.

A Court of Small Causes may issue a warrant for the arrest of a person residing in another district, but not if he resides within the same district in which the Court is situate, but outside its local jurisdiction.

This case was referred for the opinion of the High Court by Cursetji Manekji, Judge of the Court of Small Causes at Ahmedabad.

The plaintiff Chunilal had obtained a decree against the defendant, and applied for the arrest of the defendant in execution thereof. In submitting the case the Judge made the following remarks :—

* Small Cause Court Reference No. 2 of 1878.