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APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice F. D. Melvill.

PURSHOTAM LALBHAI (Plaintiff) v. BHAVANJI PARTAB AND
BAI OOJAM (Defendant).^{*} [30th April, 1880.]

The Dekkhan Agriculturists Relief Act (XVII of 1879) s. 2, cl. 2 and ss. 1, 3 and 11—
Agriculturist—Jurisdiction—Courts of Small Causes.

The effect of the extension of s. 11 of the Dekkhan Agriculturists Relief Act (XVII of 1879), by the first section of it, to all India, is simply to impose upon any person in any part of India who brings a suit, of the nature mentioned in the third section, against an agriculturist or agriculturists residing within the Districts of Poona, Satara Sholapur and Ahmednagar, the necessity of instituting such suit, and having it tried, in a Court within the local limits of whose jurisdiction he or they reside. The Court must necessarily be in some one of the said four districts.

The word "agriculturist" as defined in s. 2, cl. 2, refers to an agriculturist residing within any one of the said four districts only, and not to one residing in any other district.

On the 25th February 1879, a suit was filed for Rs. 85 in the Small Cause Court at Nadiad, in the district of Ahmedabad, against two defendants, one of whom was an agriculturist residing within the local limits of the Subordinate Judge's Court at Umerth, and not within those of the Small Cause Court at Nadiad. The Judge was of opinion that he had no jurisdiction to [361] try it under the Dekkhan Agriculturists Relief Act, and referred the case for the opinion of the High Court.

Held, that the Act did not affect the jurisdiction of the Small Cause Court in the case of a defendant who was an agriculturist and resided in a place in the district of Ahmedabad, and not in any one of the four districts mentioned in the Act.

THIS case was referred for the opinion of the High Court by Khan Bahadur Cursetji Manekji, Judge of the Small Cause Court at Ahmedabad, and in charge of the Small Cause Court at Nadiad, in the district of Ahmedabad. He stated the case as follows:—

"The above plaintiff filed a suit for Rs. 85 in the Court of Small Causes at Nadiad on the 25th February last. The defendant No. 1 is an agriculturist, and does not reside within the local limits of the said Court. He lives at Ochina or Ochima, a village under the jurisdiction of the Subordinate Judge's Court at Umreth.

"The Dekkhan Agriculturists Relief Act, 1879, came into force on the 1st November 1879. By the 3rd para. of s. 1 of this Act, four sections (being ss. 11, 56, 60 and 62) are extended to the whole of British India.

"Section 11 is to this effect: 'Every suit of the description mentioned in s. 3, cl. w, may, if the defendant, or, when there are several defendants, one only of such defendants, is an agriculturist, be instituted and tried in a Court within the local limits of whose jurisdiction such defendant resides, and not elsewhere.'

"Now, as the said defendant is an agriculturist, and resides as aforesaid, and the plaintiff's above suit comes within the description in s. 3, cl. w, of the above Act, the question for the opinion of the High Court is—has the Court of Small Causes at Nadiad got jurisdiction to entertain

^{*} Small Cause Court Reference, No. 4 of 1880.

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the suit? My opinion is in the negative, though I come to this conclusion not without much doubt.

"Para. 3 of s. 1, which extends s. 11 and other sections to the whole of British India, continues thus:—'The rest of this Act extends only to the districts of Poona, Satara, Sholapur and Ahmednagar.'" This, without more, is, I submit, sufficient to deprive all Courts of jurisdiction against agriculturists not residing [362] within their local limits, though the Act nowhere expressly repeals or modifies cl. (a), s. 17, Civil Procedure Code.

"A doubt, however, arises when the word 'agriculturist,' as defined in cl. 2, s. 2, of the Act, comes to be considered. An agriculturist is here defined to be 'a person who earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts.' If this definition be true, it would not, I submit, apply to the above defendant No. 1, nor to any other agriculturist who does not carry on agricultural pursuits 'within the limits of the said districts,' for the words 'the said districts' evidently refer to the districts of Poona, Satara, Sholapur and Ahmednagar, as stated in s. 1; otherwise they would be without meaning.

"I am, however, of opinion that in the above definition the words 'carried on within the limits of the said districts' must be taken to be mere surplusage, evidently introduced through oversight; for, taking into consideration that s. 11 is expressly extended to all India, an agriculturist cannot be more precisely defined than as 'a person who earns his livelihood wholly or principally by agriculture.'

"It further appears to me that the intention of the Legislature has evidently been to extend the benefits of the said s. 11 to agriculturists in all parts of India, though this intention has been somewhat clumsily manifested. The title of the Act, the preamble and the definition of agriculturist, all seem to point that the entire Act would apply only to the prescribed Deccan districts; this construction would defeat the intention of the Legislature, and render the first part of para. 3, s. 1, inoperative and absurd.

"I, therefore, come to the conclusion that s. 11 of the said Act does apply to the Court at Nadiad and that I have no jurisdiction to entertain the suit. I have ordered the plaint to be kept, but not numbered as a suit, pending result of this reference."

Neither of the parties appeared in the High Court.

The following is the judgment of the Court:—

JUDGMENT.

WESTROPP, C.J.—The effect of the extension of s. 11 of the Dekkhan Relief Act, by the first section of that Act, to all India, [363] is simply to impose upon any person in any part of India who brings a suit, of the nature mentioned in the 3rd section of the Act, against an agriculturist or agriculturists residing within the districts of Poona, Satara, Sholapur or Ahmednagar, the necessity of instituting such suit and having it tried in a Court within the local limits of whose jurisdiction such agriculturist or agriculturists reside, which Court must necessarily be in some one of those four districts. There is no ground whatever for mutilating the definition of an agriculturist contained in s. 2, cl. 2, in the manner proposed by the learned Judge of the Small Cause Court of Ahmedabad, which would give to the Dekkhan Agriculturists Relief Act—essentially a local measure—a general operation never contemplated by the Indian Legislature.

So far, therefore, as that Act is concerned, it does not affect the jurisdiction of the Small Cause Court at Ahmedabad in the case of a defendant who, being an agriculturist, resides at Umreth, a place in the district of Ahmedabad, and not in any one of the four districts mentioned in that Act.

Whether, independently of that Act, the suit is one in which the Small Cause Court of Ahmedabad has jurisdiction, is a question for the determination of which the learned Judge has not furnished to the Court any materials.

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*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice M. Melvill and Mr. Justice F. D. Melvill.*

DIPCHAND (*Applicant*) v. GOKALDAS AND OTHERS (*Opponents*).*
[26th April, 1880.]

Dekhan Agriculturists Relief Act (XVII of 1879), ss. 21 and 22—Attachment in execution prior to the Act coming into operation—Right of holder of decree obtained prior to Act.

Neither s. 21 nor s. 22 of the Dekhan Agriculturists Relief Act, 1879, applies to a decree made previously to the 1st day of November 1879, the day on which the Act came into force; and the holder of such a decree may arrest or imprison his agriculturist judgment-debtor, as well as attach and sell his immoveable property not specifically mortgaged.

[R., 8 B. 340 (347).]

[364] THIS was an application for the exercise of the High Court's Extraordinary Jurisdiction under the following circumstances:—

On the 17th of June 1879 the applicant Dipchand obtained against the father of the opponents a decree for Rs. 371-6 in the Court of Small Causes at Poona. On the 22nd of August following he made an application to the Subordinate Judge of Patas for the enforcement of that decree, having previously obtained from the Court of Small Causes the certificate necessary to enable him to present this application. The Subordinate Judge granted the application, and placed an attachment on the judgment-debtor's property on the 2nd of September 1879. On the passing of the Dekhan Agriculturists Relief Act on the 1st of November following, the opponents, who are agriculturists, claimed the protection of s. 22 of the Act, and prayed that the attachment might be raised. The Subordinate Judge complied with their prayer, and directed the attachment to be removed on the 12th of December 1879. The decree-holder thereupon moved the District Judge of Poona, who refused to interfere with the order of the Subordinate Judge, on the ground that that order, under s. 73 of the Act, was final. He next applied to the Special Judge under the Act, who also refused to interfere, as the decree sought to be enforced, the application to enforce it, and the order for attachment, were all prior to the passing of the Act.

The decree-holder, therefore, applied to the High Court to exercise its extraordinary powers.

* Application No. 32 of 1880, under Extraordinary Jurisdiction.