

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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APPELLATE CIVIL.

*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.]

Dekkhan 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 Dekkhan 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 Dekkhan 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.

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Ghanasham Nilkanth Nadkarn, for the applicant.—The order of the Subordinate Judge, directing the removal of the attachment, was illegal and without jurisdiction, as s. 22 of the Agriculturists Relief Act has no retrospective operation. Wherever the Legislature meant to give retrospective effect, it has been careful to say so in distinct terms. For instance, in ss. 19 and 20 it refers to decrees passed, "whether before or after this Act comes into force." This important qualification is omitted with respect to decrees mentioned in s. 22 or the analogous s. 21; and this appears all the more clear when attention is paid to cl. 2 of s. 22. There the words "when passing a decree against an agriculturist or at any subsequent time," must be taken [365] to point to a time subsequent to the passing of the Act. The opponents or their father were not agriculturists within the meaning of the Act, and do not come within the scope of its operation.

Nagendas Tulcidas, for the opponents.—The Act was clearly intended to relieve all agriculturists in the districts of Poona, Satara, Sholapur and Ahmednagar from indebtedness, and should be retrospectively applied. The object of the Legislature would be best carried out by so doing. Sections 19, 20 and 21, all provide relief to agriculturists in general, and there is no reason why certain parts of that relief should be restricted as applicable to those agriculturists only against whom decrees are passed since the coming into force of this Act.

JUDGMENT.

The judgment of the Court was delivered by

WESTROPP, C.J.—The provisions of Chap. II of the Dekkhan Agriculturists Relief Act (XVII of 1879) are by s. 3 of that Act expressly rendered applicable to suits instituted on or after the 1st November 1879 only, the day on which the Act came into force (s. 1). The provisions of Chap. III, from its commencement (s. 11) down to and inclusive of s. 18, also seem to be purely prospective, and so it has been expressly decided as to ss. 12 and 13 by a Division Bench of this Court, on the 23rd March last, upon a reference from the Subordinate Judge of Rahuri in the case of *Suryaji v. Tukaram* (1). The 19th and 20th sections (in the same chapter) are, however, rendered expressly applicable to decrees passed before as well as to those passed after the coming into force of the Act. There is not any such specification in ss. 21 and 22 of decrees passed before the coming into force of the Act. This important circumstance, coupled with the special provision contained in the second clause of s. 22, which appears to us to be inapplicable to any case in which the decree had been made before the Act came into force, has led us to the conclusion that neither s. 21 nor s. 22 was intended by the Legislature to apply to decrees made previously to the coming into force of the Act. Section 21 enacts that "no agriculturist shall be arrested or imprisoned in execution of a decree for money." Section 22, [366] cl. 1, enacts that "no agriculturist's immoveable property shall be attached or sold in execution of any decree or order, unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists." As a substitute or compensation for the right of arrest and imprisonment and the right to attach immoveable property whereof the money decree-holder was thus deprived, the Legislature proceeds by the second clause of s. 22 to provide as follows:—"But the Court

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may, when passing a decree against an agriculturist, or at any subsequent time, direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property, and deal with the same for the benefit of the decree-holder in manner provided by s. 29." The words "when passing a decree against an agriculturist" cannot be applied to any decrees made before the coming into force of the Act, and the words "or at any subsequent time" can only be applied to a time subsequent to a decree passed under the Act. The result of this is, that no compensation is provided for any decree-holder who was such before the coming into force of the Act—although, if s. 21 and the 1st clause of s. 22 were applied to such a decree-holder, he would be thereby deprived of the right to enforce his decree either by arrest or imprisonment of his debtor or by attachment or sale of his immoveable property—he having already by the Civil Procedure Code (Act X of 1877), s. 266, cls. (b) and (c), been debarred from resorting for satisfaction to the implements of husbandry and cattle, or the materials of the houses and other buildings belonging to his agriculturist debtor, which implements of husbandry and cattle, in nine hundred and ninety-nine cases out of a thousand, constitute his only moveable property. We cannot think that the Legislature meant quite to say that the decree-holder who became such before Act XVII of 1879 came into force, should not be entitled to enforce his decree by any means whatever, which would virtually be the result of holding that s. 21 and the 1st clause of s. 22 applied to [367] such decrees. The second clause of s. 22 and the omission to specify, in ss. 21 and 22, decrees made before the Act came into force, which decrees had been carefully named in ss. 19 and 20), together with the improbability that the Legislature forgot the case of *Ratamsi Kalianji* (1) recently decided by a Full Bench of this Court, and which strongly illustrates the necessity of using distinct language when the Legislature has resolved on depriving judgment-creditors of their existing rights by retrospective legislation, fortify the conclusion which we have drawn from the second clause of s. 22.

The Court, for the reasons stated in the above judgment, make the rule nisi of the 12th March 1880 absolute, and reverse the order of the Subordinate Judge, dated the 12th December 1879.

Order reversed.

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