properly signed within the meaning of the proviso in s. 51 of the amended Civil Procedure Code.

(2) It should be proved to the satisfaction of the Court, under s. 52 of the same Act, that a person, other than the plaintiff, verifying the plaint, is acquainted with the facts of the case; but in the case of a person holding such a power of attorney as above described, or of any other recognized agent, the Court will probably not insist on any extreme stringency of proof.

(3) Section 52 of the amended Civil Procedure Code (X of 1877) does not appear to require that the verification should be made in the presence of an officer of the Court; but, having regard to the necessity of satisfying the Court that the person, other than the plaintiff, who verifies the plaint, is acquainted with the facts of the case, it is desirable that a verification by such a person should be made in the presence of the Court, unless the Court be satisfied that there is sufficient ground for dispensing with his attendance.

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4 B. 472.

[472] APPELLATE CIVIL.

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

JETHA MADHAVJI AND OTHERS, (*Plaintiffs*) *v.* NAJERALLI ABHRAMJI, (*Defendant.*)* [23rd March, 1880.]

Civil Procedure Code, (Act X of 1877), s. 295—Attachment—Rateable distribution of assets.

Certain moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-debtor obtained decrees against him in the Court of the Subordinate Judge at the same place, and applied to it for the attachment of the same property in execution of their decrees. The Subordinate Judge, accordingly, attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees, obtained in the Subordinate Judge's Court, claimed a rateable share in the assets realized by the Small Cause Court, under s. 295 of Act X of 1877.

Held, that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court.

[**F.**, 18 B. 456; **Appr.**, 6 M. 357: **R.**, 5 B. 198; L.B.R. (1893—1900) 161 (167).]

THIS case was referred for the opinion of the High Court by Khan Bahadur Cursetji Manakji, Judge of the Court of Small Causes at Ahmedabad, with the following remarks:—

"Under these decrees, obtained in this Court, all against the same judgment-debtor, moveable property has been duly attached and sold by this Court in due form.

"After such attachment, however, but before realization of assets by sale, certain other creditors obtained decrees against the same debtor in the Court of the Subordinate Judge here, and having applied to *that Court* for execution of their decrees, prohibitory orders have been received by this Court for the attachment of the property mentioned in the preceding para. The decree-holders of the Subordinate Judge's Court now claim a

* Small Cause Court Reference, No. 2 of 1880.

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rateable share, under s. 295 of the Civil Procedure Code, out of the assets realized by this Court.

"The question, then, is, are they entitled, under the aforesaid circumstances, to claim such share? I am of opinion that they are not.* * *

[473] I have, therefore, held, subject to the opinion of the Honourable the High Court, that, under the circumstances above set forth, the decree-holders of the Subordinate Judge's Court are not entitled to share rateably in the assets realized by this Court."

The parties did not appear either in person or by pleaders.

JUDGMENT.

WESTROPP, C.J.—The Court is of opinion that the decree-holders in the Subordinate Judge's Court are not entitled to any share in the assets realized by the Small Cause Court, until after satisfaction of the decrees in that Court mentioned by the Judge of the Small Cause Court.

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APPELLATE CIVIL.

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

RANGA (*Original Defendant*), *v.* SUBA HEGDE (*Original Plaintiff*), *Respondent.** [23rd March, 1880,]

Mula-vargdars, *power of, to raise rent of* mul-gainidar—Mul gainidar—*Enhancement of assessment—Power of the State.*

A *mula-vargdar*, or superior holder, cannot raise the rent of his *mul-gainidar* or permanent tenant holding at a fixed rent, on the ground that the assessment on the land has been enhanced at the Government survey.

Babshetti v. *Venkataramana* (1)and *Ramakrishna Kine* v. *Narshiva Shanbog*(2) (S.A. No. 46 of 1879) followed.

Vyakunta Bapuji v. *The Government of Bombay* (3) referred to.

The plaintiff, who was a *mula-vargdar* (superior holder) of certain land situated in a village in the district of Kanara, sued to recover from the defendant, his *mul-gainidar* (permanent tenant), the enhanced assessment levied on the land by Government, and the local cess. Plaintiff also claimed rent for one year. The plaint alleged that the assessment had been enhanced, because of the defendant's encroahment on the adjoining land. The defendant denied his liability for the enhanced assessment, as he was a *mul-gainidar*, and only liable to pay the fixed annual rent reserved in the lease. He also denied having made any encroachment, and contended that the land, alleged to have been acquired by encroachment, had been included in the lease. Both the lower Courts allowed the plaintiff's claim with respect to the enhanced assessment and local cess, together with rent for one year. On an issue being sent to the District Judge by the High Court [474] on second appeal, it was found, that defendant was in possession of land other than that which he held under the lease; that he had acquired this other land by encroachment subsequently to the date of the lease; that both the lands were entered in the plaintiff's name in the Government survey at which the assessment on the land originally demised to the defendant, was raised to Rs. 36-12-0 (the original assessment being Rs.12), while the land subsequently acquired by defendant was assessed at Rs. 5.

Held, that the plaintiff could not recover from the defendant any more than the rent reserved in the lease in respect to the land originally demised, but that

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* Second Appeal No. 273 of 1879.

(1) 3 B. 154. (2) Printed Judgments of 1879, p. 294.

(3) 12 B.H.C.R. 1 (Appx.).