1880 MARCH 5. PRIVY COUNCIL. 4 B. 494 (P.C.)= 7 I.A. 162= 4 Sar. P.C.J. 154=3 Suth P.C.J. 757=4 Ind. Jur. 421=3 Shome L.R. 206=7 C.L.R. 1.

added to the decree of the High Court; but that, subject thereto, the said decree be affirmed. They also direct that the costs of this appeal be taxed; that the amount of such costs, when taxed, be added to the costs of the cause, and paid with them out of the estate.

Solicitors for the appellant.—Messrs. *Ashurst, Morris, Crisp and Co.*

Solicitors for the respondent.—Messrs. *Ramsden and Austin.*

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4 B. 503.

APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Pinhey.

CHHAGANLAL NAGARDAS, (*Plaintiff*) *v.* JESHAN RAV DALSUKHRAM, (*Defendant*).* [23rd September, 1879.]

Jurisdiction—Personal property—Court of Small Causes—Suit by decree-holder.

A suit by a decree-holder to establish his right to attach and sell moveable property as belonging to his judgment-debtor, is not a suit for personal property within the meaning of s. 6 of Act XI of 1865, and a mofussil Court of Small Causes has no jurisdiction to entertain it, even though the value of the property be such as to fall within its pecuniary limit.

[Diss., 7 A. 152 (F.B.)=4 A.W.N. 349; F., 8 B. 259.]

THIS was a case stated by S.H. Phillpotts, Judge of Ahmedabad, under s. 527 of the Code of Civil Procedure.

[504] The plaintiff's deceased father obtained a decree in the Small Cause Court of Ahmedabad against one Jagjivan, and in execution thereof attached certain moveable property, valuing it at Rs. 60-5-3. The defendant Jeshan Rav intervened, alleging that the property had been sold to him, and the attachment was in consequence removed. The plaintiff thereupon brought the present suit, and presented his plaint in the Court of the Subordinate Judge (First Class) at Ahmedabad. The plaint was, however, returned by the Joint Subordinate Judge, who was of opinion that he had no jurisdiction. The plaintiff next presented his plaint to the Judge of the Court of Small Causes, who held that he had no jurisdiction. The plaintiff, therefore, went back to the First Class Subordinate Judge, but he refused to alter the previous decision of the Joint Subordinate Judge. An appeal was, therefore, made to the District Judge, who, in referring the case for the orders of the High Court, said: "I am of opinion that the Small Cause Court has jurisdiction, as I can conceive no reason for any difference being made between this and the converse case, and the High Court have decided in *Gordhan Prema* v. *Kasandas* (1) that the suit brought by a defeated claimant, under s. 283 of Act X of 1877, is cognizable by a Court of Small Causes."

There was no appearance in the High Court by either party.

JUDGMENT.

The judgment was delivered by—

MELVILL, J.—It has been decided by the Court, in *Nathu Ganesh* v. *Kalidas* (2) and *Gordhan Prema* v. *Kasandas*, (1) that whether under the old or the new Code, the suit of a claimant, whose property has been

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* Civil Reference, No. 12 of 1879.

(1) 3 B. 179 (181). (2) 2 B. 365.

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attached, is cognizable by a Court of Small Causes when the property is moveable property of a value not exceeding Rs. 500. The reason for these decisions was that a suit, *by the owner*, for the recovery of attached property may properly be regarded as a suit "for personal property." But a suit *by a decree-holder*, to establish his right to attach and sell certain property as belonging to his judgment-debtor, cannot be called a suit for personal property. The distinction is clearly pointed out in *Nathu v. Kalidas*, and it is there shown how this [505] distinction explains the decisions of the Calcutta and Madras High Courts which are there quoted. None of those decisions is in favour of the proposition that a suit by a judgment-creditor to establish his debtor's title is cognizable by a Court of Small Causes, and the ruling of this Court in *Jethabhai* v. *Bai Lakha* (1) is directly adverse to it. The District Judge must be informed that this Court does not concur in the view taken by him, and, consequently, that the Subordinate Judge's order must be reversed, and the plaint received. It may, no doubt, as the District Judge observes, be somewhat anomalous that a Court of Small Causes should be able to try the suit of one claimant, but not that of the other, when the two suits arise out of the same circumstances, and involve the same issues; but the anomaly is caused by the wording of s. 6 of Act XI of 1865, and can only be removed by an amendment of that section.

NOTE—This decision was followed in the case of *Balkrishna* v. *Kisansing*, Extraordinary Application No. 153 of 1879, decided by M. Melvill and Kemball, JJ., on the 10th of August 1880.

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4 B. 505.

APPELLATE CIVIL.

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

THE COLLECTOR OF AHMEDABAD (*Original Defendant*), *Appellant v.* BALABHAI KEVALDAS (*Original Plaintiff*), *Respondent.** [6th April, 1880.]

Bombay Acts I of 1865 *and IV of* 1868, *s.* 5, *cl.* 1, *para.* 2—*Building-sites—Exemption from payment of Government land revenue.*

On the 6th April, 1836, the Collector of Ahmedabad demised by lease a building-site in that city to the plaintiff's grandfather for a term of ninety-nine years. No rent was reserved by the lease as then presently payable, but it contained a provision that the lessee should pay, in respect of the said site, such land tax as might "fall upon all." The lessee and his heirs held the site from the date of the lease down to 1878, without paying or being required to pay any land tax or rent to Government. In 1878, however, Government levied from the plaintiff Rs. 2-11 as land revenue assessed on the site. Plaintiff thereupon sued the Collector of Ahmedabad for recovery of the amount, on the ground that the assessment and levy were illegal.

[506] *Held*, that the plaintiff's building-site was exempted from liability to assessment by Bombay Act IV of 1868, s. 5, cl. 1, para. 2 which enactment applied to the case.

Held, also, that this exemption was not to continue beyond the term for which the site had been demised by Government, but that on its expiration it would be open to Government to resume the land altogether or to re-let it on such terms as to assessment or otherwise, as might be the pleasure of Government.

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* Appeal No. 2 of 1880 from original decree.

(1) 6 B. H. C. R. 37.