1880
APRIL 13.
ORIGINAL
CIVIL.
4 B 619.

[623] placed on the long-cause list, and it is only now, when it comes on for hearing, that the plaintiffs say they have been mistaken as to the person. No doubt they have; but still they have made the person they have summoned defendant, and the case having reached this stage the proper order appears to be one for dismissing the suit. The English cases cited do not seem opposed to this literal adherence to the Code of Civil Procedure. In the case most relied on, *viz.*, *Walker* v. *Medland* (1), a person not really sued, or of the name of the person sued, voluntarily put himself forward, and persisted, in spite of notice, in signing judgment of *non pros.* The judgment, as obtained by a trick, was set aside. Here there has been no trick. *Richards* v. *Hanley* (2) rested on the defendant's having taken steps towards a judgment of *non pros*, when he knew that he was not the person sued, and apparently had falsely assumed the defendant's name. The wrong description in this case would not have saved the defendant, whose name and present address had been sufficiently given. By appearing, the defendant summoned acquiesces in being sued in the name used to summon him, and when the case then comes to a hearing, there having been no fraudulent trick which the Court should defeat, the proper order is for the dismissal of the suit, which is the order that I must make.

Suit dismissed.

Attorneys for the plaintiff.—Messrs. *Tobin and Roughton.*
Attorneys for the defendant. —Mr. *Mansukhlal Munshi.*

---

4 B. 624.

[624] ORIGINAL CIVIL.

Before Mr. Justice West.

TULSIDAS DHUNJEE *Plaintiff v.* VIRBUSSAPA AND ANOTHER, *Defendants.** [28th August, 1880.]

Dekkhan Agriculturists Relief Act (XVII of 1879), s. 2, cl. (w); s. 11—Agriculturist.

The Dekkhan Agriculturists Relief Act (XVII of 1879) is not limited in its application to suits for sums not exceeding Rs. 500.

The effect of the reference, in s. 11 of the Dekkhan Agriculturists' Relief Act, to cl. (*w*) of s. 2 is to make all suits of the kinds therein described when brought against an agriculturist cognizable by the local Courts and by them only.

Section 11 extends to the whole of British India as to suits brought against agriculturists of the description given in s. 2.

In a suit against defendants, whowere residents at Sholapur, for Rs. 1,947, the price of goods sold and delivered, the defendants moved for a postponement of the hearing, in order that a commission might issue to take evidence at Sholapur, alleging that by the evidence thus obtained they would be proved to be agriculturists within the meaning of the Dekkhan Agriculturists Act, and consequently under s. 11 could only be sued at Sholapur. The Court granted the commission, holding that if the defendants established that they were *bona fide* agriculturists, they were exempt from the jurisdiction of the High Court.

A man must have gained his livelihood by farming, for at least one full agricultural season, to have acquired the condition of an agriculturist under the Act.

[F., 14 B. 387 (389); 13 Ind. Cas. 223=5 S.L.R. 179; R., 13 B. 600 (625); 15 B. 30; 16 Ind. Cas. 449 (452)=8 N.L.R. 107; 17 Ind. Cas. 621=8 N.L.R. 169.]

---

* Suit No. 338 of 1880.

(1) 1 D. & L. 159.

(2) 10 Jur. (Q.B.) 1057.

1880
AUG. 28.

ORIGINAL CIVIL.

4 B. 624.

SUIT to recover Rs. 1,947, being the price of goods sold and delivered.

In the title of the plaint filed in this case the defendants were described as " of Sholapur, trading there in partnership under the firm of Virbussapa Vijari." The plaintiff resided in Bombay.

Farran, for the defendants, moved that the hearing of the case should be postponed for a month, in order that a commission should issue to Sholapur to take evidence on behalf of the defendants. He stated that the evidence thus obtained would prove that the defendants were agriculturists within the meaning of the Dekkhan Agriculturists Relief Act (XVII of 1879), and, therefore, under s. 11 of that Act, could only be sued at Sholapur.

[625] *Inverarity* for the plaintiff.—We object to the postponement and to the issue of the commission. The point upon which it is proposed to take evidence is irrelevant, as Act XVII of 1879 does not apply where the suit is for a sum over Rs. 500. Chapters II and V of that Act deal with the question of jurisdiction. The latter need not be considered here. As to Chapter II, cl. (*b*) of s. 3 mentions the only classes of suits intended to be dealt with under the Act. The fact that a Subordinate Judge is to try the suits and that by s. 10 no appeal is allowed, shows that the Act is not intended to apply to suits for large sums. Chapter III does not enlarge the jurisdiction. It only regulates the procedure in suits of the classes specified in Chap. II.

Farran in reply.—Chapter III applies to suits of any amount, provided they are of the description mentioned in cl. (*w*) of s. 3. The object of the Act, as stated in the preamble, would be frustrated if it were held to apply only to suits for sums not exceeding Rs. 500. There is nothing in the Act which limits the jurisdiction, and it was not necessary expressly to confer it, as the Courts already possess it. Section 11, however, positively confers an exclusive jurisdiction. The Court may refer to the "objects and reasons" assigned for passing the Act, to see what was the mischief intended to be remedied: See *Government Gazette* of 13th November 1879, p. 277. [*Inverarity* objected, and cited *Julius* v. *Bishop of Oxford* (1).]

It cannot be said that Chap. III merely regulates procedure in cases specified in Chap. II, for the latter chapter itself prescribes the mode of procedure in ss. 7 and 8. Chapter VII gives the District Judge power to control proceedings in suits under chap. II; but suits under Chap. III are left untouched, the general law being applicable. The provisions of Chap. III are of general application, *e. g.*, s. 21. If a suit be brought under chap. III the defendant may file a written statement, and an appeal will lie, but there are certain regulations which modify the general law, *e. g.*, in s. 13. Sections 16 and 22, also, are in general terms, and, taken with the preamble, show that the Act is to apply generally. In s. 11 the word "agriculturist" **[626]** is used in the sense defined in s. 2. It was necessary that s. 11 should apply to the whole of India, otherwise the Act could be evaded by parties making contracts outside the four specified districts.

JUDGMENT.

WEST, J.—The defendants in this case are residents at Sholapur. They carried on trade there, and in the course of their dealings contracted

(1) 4 Q.B.D. 525=on appeal L. R. 5 Ap. Ca. 214.

1880
AUG. 28.
ORIGINAL CIVIL.
4 B. 624.

obligations to the plaintiff in Bombay on which he proposes to sue them in this Court. But Sholapur being one of the districts enumerated in s. 1 of the Dekkhan Agriculturists Relief Act (XVII of 1879), the defendants rely on it as excluding the cause from the jurisdiction of this Court. Their livelihood, they say, is now earned "wholly or principally by agriculture carried on within the limits of the said district." They must, therefore, according to s. 2, cl. 2, be deemed "to reside" in that district, and hence they contend, as the suit is of the kind contemplated by s. 11, they are subject, in relation to it, only to the jurisdiction of the Civil Court at Sholapur.

Section 11 of the Act says: "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.

"Every such suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides, and not elsewhere.

"Nothing herein contained shall affect ss. 22 to 25 (both inclusive) of the Code of Civil Procedure."

Clause (*w*) of s. 3 simply enumerates the following classes of suits without saying anything further:—

"(*w*) Suits for the recovery of money alleged to be due to the plaintiff

on account of money lent, or advanced to, or paid for, the defendant, or as the price of goods sold, or,

on account stated between the plaintiff and defendant, or

[627] on a written or unwritten engagement for the payment of money not hereinbefore provided for."

This enumeration being embodied by reference in s. 11, becomes, according to received principles, a part of that enactment; and if we read the section with the enumeration introduced into it, the effect is to make all suits of the kinds described, when brought against an agriculturist, cognizable by the local Courts, and by them only.

Section 1 says that s. 11 shall extend to the whole of British India, Section 2, containing the definition of "agriculturist" is not so extended. If it created any right or prescribed any course of action, it would operate only in the specified districts; but as it merely defines two words, local extension is not properly predicable of it. Its operation is within the Act itself, and there alone, being such that wherever the word "money" or the word "agriculturist" occurs, the definition given may be substituted for it. The sections in which these words are used have a wider or narrower local operation: the defining section determines only in what sense they are to be understood apart from the notion of locality. It follows that "agriculturist" in s. 11 means one according to the definition in s. 2, although the latter section is not declared to extend to the whole of British India. Section 11 extends to the whole of British India as to suits brought against agriculturists of the description given in s. 2.

Whether in referring to cl. (*w*) of s. 3 the Indian Legislature intended s. 11 to have so wide an operation as on a literal construction must be assigned to it, seems really a matter of some doubt. The clause occurs in a section which prescribes that certain rules shall apply to

1880
AUG. 28.
ORIGINAL CIVIL.
4 B. 624.

suits under Rs. 500 or Rs. 100 according to the class of Court in which they are instituted, and may probably have been intended as a subordinate definition of suits classified by cl. (*b*) for the purpose of the section chiefly according to the amount at issue. This is the connotation with which the words of cl. (*w*) are naturally read, although in themselves they say nothing as to pecuniary value. In s. 8 the words "suits of the descriptions mentioned in s. 3, cl. (*w*) and (*x*)," clearly signify suits not only answering to the [628] descriptions there given as to their character, but also satisfying the concurrent limitations as to value. Carrying on this idea to s. 11, the Legislature may have meant its reference to cl. (*w*) to be understood in the same sense. A restricted sense, it is contended, is the right one to give to words which cut down existing remedies, and the jurisdiction is not to be construed as excluded in any case beyond the clearly expressed will of the Legislature.

The correctness of these principles is not to be contested, but their applicability to this case cannot, I think, be admitted. Section 8 has a limited operation, not because of a limited sense put on cl. (*w*) of s. 3, but because s. 8 is itself one of the rules prescribed by s. 3 for a limited class of cases, and those only. It may have been intended that agriculturists in the four districts should, in all cases, of the kinds enumerated, be subject only to the local Courts, albeit the special rules for abridging the procedure prescribed in the Chapter II were meant to be applied only to suits of small amount. In order to deprive the language, actually used, of its direct significance, there should be something showing unmistakably that its generality is limited or affected by the obviously narrower purpose of the Legistature as gathered from its own declaration and the provisions of the Act regarded as a whole.

The preamble says merely that it "is expedient to relieve the agricultural classes in certain parts of the Dekkhan from their indebtedness." In this there is nothing to show that the relief was designed only for persons owing debts of small amount. Moreover, the enactments of the Acts, as is not unusual (*Reg.* v. *Pierce* (1)), go considerably beyond the preamble. The special provisions of s. 3, cl. (*b*), with cls. (*w*) and (*x*), as distinguished from cls. (*y*) and (*z*), plainly extend to all classes not only to agriculturists, provided the given conditions be satisfied. Sections 21 and 22 are, in terms, applicable to all agriculturists, and cannot reasonably be confined to judgment-debtors within any particular amount. The relief by insolvency proceedings afforded by s. 25 cannot have been intended only for agriculturists owing [629] but petty sums. The agriculturist entitled or subject to the mediation of a conciliator under s. 39, is every one who falls within the definition. In all these cases the words of the Act would have to be wrested in order to confine them to debts of Rs. 500 or less. Clauses in general terms are not, unless the intent is plain, to be restrained in significance by others which apply only to particular cases(2). I cannot ascribe oversight to the Indian Legislature, or suppose that a larger measure would or could be smuggled through it in the disguise of a smaller one. It is safer to allow that, seeing its own purpose and the effect of its language clearly in the light of a higher intelligence, it has not in every section been so explicit as quite to meet the needs or the wishes of people of inferior perspicacity. As the Act, then, was not intended, in the instances I have mentioned, to

(1) 3 M. S. 62. (2) *Per* Buller, J. in *Andree* v. *Fletcher*, 2 T. R. at p. 164.

1880
AUG. 28.

ORIGINAL CIVIL.

4 B. 624.

be limited to the cases of small debts, no analogy suggests such a restriction of the literal sense of s. 11.

It may seem strange and hard that a creditor having a claim arising from extensive transactions in Bombay, should have to forsake the jurisdiction on whose protection he counted in entering into the transaction on which his claim arises, and sue his debtor in a local Court subject to such onerous conditions as those imposed by ss. 39, 47, 12, 13 and 14 of the Act. But the whole measure is one of a special character, and not to be judged by reference to the ordinary standards.

The jurisdiction of a superior Court cannot be taken away, except by express words or necessary implication (1); but here the words are in themselves clear, and there is nothing in the clause in which they stand or in the general purpose of the Act to qualify their sense, as in *Sakharam* v. *The Collector of Ratnagiri* (2). The intention of the Legislature is to be ascertained from the grammatical sense as applied to the object in view (3); and although the jurisdiction of the High Court is not specifically excluded, it **[630]** is excluded by inclusion in a class, as in the case referred to in Coke's Second Institute. A clear implication will take away even the prerogative of the Crown: *Theberge* v. *Laudry* (4). The hardship which the Act imposes on the creditor in Bombay, though greater in degree, is in principle the same as that imposed on the Mofussil creditors. Both are subjected to conditions which they could not have anticipated; but such is the law "and while it so continues I consider myself, in administering it, as bound to administer it as I find it" (5). In *Abel* v. *Lee* (6), Willes, J,, says: "I utterly repudiate the notion that it is competent to a Judge to modify the language of an Act of Parliament in order to bring it into accordance with his views of what is right and reasonable." This principle, to which I have referred on former occasions, was said by Sir J. Jervis, C.J., to be applicable, "even though it does tend in our view of the case, to an absurdity or manifest injustice" (7); and Lord Bacon, although a Chancellor, says: "*Decernendi contra statutum expressum sub ullo æquitatis prœtextu, curiis prœtorri is jus ne esto*" (8). I cannot here pretend an equity or an authority to fritter away the law, or deprive it of its natural effect (9). "*Cumjudisis sit, secundum legem, non vero de legis justitia ve injustitia judicare: et facti quidem quœstio, non vero juris auctoritas in eju potestate sit*" (10).

If, therefore, the defendants are really agriculturists within the meaning of the Act, the jurisdiction of this Court is, I think, excluded. On the affidavits, however, I am not satisfied that they are such agriculturists. The assertion on their side is that they now live solely by agriculture; but it seems that they were, within a few months, traders or acting as traders, as Virbussapa's letter of 19th December 1879 plainly shows; and I think a man must have gained his livelihood for, at least,

(1) 2 Inst., Cap. XIX, p. 37; *Rex* v. *Morley*, 2 Burr. 1040; *per* Ashhurst, J., *Shipman* v. *Henbest*, 4 T. R. at p. 116.
(2) 8 B. H. C. R. A.C.J. 219.
(3) 9 *Per* Blackburn, J. in *Eastern Counties, &c. Company* v. *Marriage*, 9 H. L. Ca. at p. 36.
(4) L. R. 2 App. Ca. 102.
(5) *Bryant* v. *Foot*, 3 L.R.Q.B. 512, *per* Bramwell, B. quoting Cockburn, C.J.
(6) 6 L.R.C.P. 371. (7) *Abley* v. *Dale*, 11 C.B. 391.
(8) *De Augm., Lib, VIII, Aphor* 44.
(9) See Blackst. Com., B.I., Intro., *VII ad fin.* Vin Com., *Ad Inst., Lib. IV, Tit. XVII.*
(10) Voet ad Pandect, *Lib. I, Tit. III*, s. 23.

1880
AUG 28.
ORIGINAL CIVIL.
4 B. 624.

one agricultural season by farming, to have acquired the condition of an agriculturist [631] under the Act. The *status* of agriculturist and of trader is not to be taken up and laid aside momentarily in order to embarrass a creditor. It may be that the defendants can prove that they are *bona-fide* agriculturists, and so on a full investigation establish the exemption they claim.

They must be allowed an opportunity of doing this, and I will accede to the application for taking evidence, as to the *status* of the defendants, by commission, except as to the defendants themselves and any depositions they may personally have to make.

Motion granted.

NOTE.—Evidence on commission having been taken and returned, it was, on the 20th November 1880, decided that, as one of the defendants gained his livelihood chiefly by agriculture, the jurisdiction of the High court was excluded.

Attorneys for the plaintiff.—Messrs. *Hore, Conroy and Brown.*

Attorneys for the defendants.—Messrs. *Jefferson, Bhaishankar and Dinsha.*

---

4 B. 631=5 Ind. Jur. 479.

ORIGINAL CIVIL.

Before Mr. Justice Marriott.

KAY AND TWO OTHERS (*Plaintiffs*) *v.* POORUNCHAND POONA LAL JAVHERRY (*Defendant*).* [11th September, 1880.]

Practice—Privileged communication—Inspection—Production.

The plaintiffs resided in England, and sued the defendant in Bombay for specific performance of an agreement to purchase certain premises. This agreement had been made on behalf of the plaintiffs by S., their agent in Bombay. The defendant pleaded that by the terms of the agreement it was provided that the deed of assignment should contain a covenant by the three plaintiffs to indemnify the defendant against any claims upon the premises that might be made at any time by or on behalf of the representatives of one N. The defendant's solicitor prepared a draft assignment which contained this covenant, and sent it to the plaintiffs' solicitors (Messrs. Prescot and Winter) for approval. On the 19th March 1880, Mr. Winter called upon Mr. Payne, the defendant's solicitor, and informed him that M., the third plaintiff, refused to sign any deed which contained the above covenant. At this interview Mr. Winter read to Mr. Payne portions of a letter written with reference to the proposed deed by McG. & Co., (solicitors for the first two plaintiffs) to V., the solicitor of the third plaintiff, and of another letter written by V. to his client, the third plaintiff. The defendant called upon the plaintiffs to produce these letters for inspection.

[632] *Held*, that the letters were privileged, and that the fact that portions of them had been read to the defendant's solicitor, was no waiver of the privilege as regarded the parts which were not read.

SUMMONS calling on the plaintiffs to show cause why they should not produce to the defendant the letters from Messrs. McGregor, Donald & Co., solicitors for the first and second plaintiffs, to Messrs. Van Sandau and Cumming, solicitors for the third plaintiff, and from Messrs. Van Sandau and Cumming to Mr. H. B. Muir, the third plaintiff, both dated the 26th February 1880.

In this suit the plaintiffs sought specific performance of an agreement whereby the defendant agreed to purchase certain premises from the

* Suit No. 287 of 1880.