

JUDGMENT.

1880
 JULY 26.
 APPEL-
 LATE
 CIVIL.
 5 B. 132.

The judgment of the Court was delivered by

M. MELVILL, J.—We think that those persons are “labourers” within the meaning of s. 266 of Act X of 1877 who earn their daily bread by personal manual labour, or in occupations which require little or no art, skill, or previous education. The defendants, who perform the lowest kind of manual labour in a spinning and weaving mill, and earn thereby Rs. 10 or 12 a month, come within the category. Nor does it appear to us that their remuneration is any the less “wages,” because the amount is made to depend upon the number of pounds of cotton spun. The commonest class of labourers in this country, *viz.*, the coolies employed on railways or other similar works, are ordinarily paid, not by the day, but by the number of baskets of earth carried; and it is impossible to suppose that the Legislature did not intend the earnings of this class to be protected.

The rule is discharged with costs.

Rule discharged.

5 B. 135.

[135] APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Kembell.

ASMAL SALEMAN AND OTHERS (*Original Plaintiffs*), Appellants v.
 THE COLLECTOR OF BROACH, AS MANAGER OF THE KHERWADA
 THAKOR'S ESTATE (*Original Defendant*), Respondent.*

[25th August, 1880.]

Broach Talukdar's Relief Act XV of 1871—Civil Court jurisdiction.

The Broach Talukdar's Relief Act XV of 1871 does not bar the cognizance, by the Civil Court, of a suit to recover the amount improperly levied as rent of rent-free land, and to obtain a declaration that such land is not subject to the payment of rent, albeit that, under s. 23 of the Act, the Manager of a Thakor's estate is exempt from personal liability for anything done by him *bona fide* pursuant to the Act, and is not subject to an action for damages on account of the attachment of the plaintiff's property.

THIS was a second appeal from the decision of H. Birdwood, Judge of Surat, confirming the decree of H. F. Aston, Assistant Judge.

The plaintiffs sued, *first*, to recover certain moveable property, or its value, the property having been distrained and sold by order of the defendant as manager of the minor Thakor of Khervada, in the Broach Collectorate, for rent of certain *vanta* lands which the plaintiffs claimed to hold rent-free; *secondly*, to set aside the sale of certain houses and to recover possession of them, or their value, the sale having been made for the purpose of realizing rent in respect of these lands; and, *thirdly*, to obtain an injunction restraining the defendant from levying any further rent in respect of them.

The defendant denied that the plaintiffs' lands were *vanta*, or that they had any proprietary title to them, and asserted that the plaintiffs' claim, if any, was time-barred. The Assistant Judge held that a part of the claim was time-barred, and that the rest of it was not proved. The District Judge, in appeal, raised an objection to the cognizance of the suit

* Second Appeal No. 204 of 1880.

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by the Civil Court, and held that the Talukdari Act deprived the Civil Court of the power of hearing a suit of this nature. The plaintiffs appealed to the High Court.

Nagindas Tulsidas, for the appellants.

[136] *Nanabhai Haridas*, Government Pleader, for the respondent.

JUDGMENT.

The judgment of the Court was delivered by

M. MELVILL, J.—We fail to find anything in Act XV of 1871 which can be held to bar a suit like the present, which is to recover the amount said to have been improperly levied as rent of rent-free land, and to obtain a declaration that such land is not subject to the payment of rent. It is impossible to suppose that the Legislature intended to confer upon the manager of a Thakor's estate the power to confiscate the rights of property by treating the private estates of individuals as if they held as tenants of the Thakor. Section 23 no doubt exempts the manager, from personal liability for anything done by him *bona fide* pursuant to the Act, and he would not, therefore, be subject to an action for damages on account of the attachment of the plaintiffs' property. But it is certainly open to the plaintiffs to prove that their land is held rent-free, and to recover from the Thakor's estate any moneys which have been improperly levied as rent, and paid into the estate. The decision in S. A. 141 of 1879, to which the District Judge refers, has no bearing on the present case. The only question argued in that appeal, was whether a "*hak*," payable from the Thakor's estate, and which had accrued due before the application of Act XV of 1871 to the estate, was a liability charged upon the estate within the meaning of s. 8 of the Act. This Court held that it was a charge, and that, consequently, the claim in respect thereof ought to have been notified to the manager in the manner prescribed in ss. 6 and 7; and on this ground the Court confirmed the decree of the District Judge.

The decree of the District Court is reversed, and the case remanded for a decision of the issues raised by the appeal. Costs to follow final decision.

Decree reversed.

5 B. 137.

[137] APPELLATE CRIMINAL.

Before Mr. Justice Kemball and Mr. Justice F. D. Melvill.

In re SAVANTA.† [September, 1880.]

Sanction—Mamlatdar's Court—The Code of Criminal Procedure, Act X of 1872, s. 468.

The Mamlatdar's Court constituted by Bombay Act III of 1876, is a Civil Court within the meaning of s. 468 of the Code of Criminal Procedure; therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Mamlatdar's Court, shall not be entertained in the Criminal Courts except with the sanction of the Mamlatdar's Court, or of the High Court to which it is subordinate.

[F., 2 Bom. Cr. Cas. 9 (11, 12) = 14 Cr.L.J. 80 = 15 Bom. L.R. 53 = 18 Ind. Cas. 416.]

THIS was an application for revision of an order of discharge passed by J. A. Guerin, Magistrate (First Class) of Belgaum, under s. 215 of the Code of Criminal Procedure in the case of the *Empress v. Bhimaji*

* Criminal Application for Revision, No. 122 of 1880.