1880
SEP. 6.
FULL BENCH.
5 B. 283 (F.B.).

preventing the rectification of a Subordinate Court's decree by the High Court, or the reinstatement of a person in possession, of which he has been deprived by the execution of the erroneous decree of a Subordinate Court; and (3) that the alienation of the vatani property in this case to Rudrapa has received the sanction of the authorized officer of Government so far back as A.D. 1831: we must hold that the certificate of the Collector was unlawfully issued, and, accordingly, the orders of the lower Courts of the 13th June, 1876, and the 23rd October, 1876, must be reversed, and the Subordinate Judge must proceed to give effect to the decree of the High Court of the 29th September, 1875, by reinstating the defendant Rachapa in possession of the mortgaged premises in Ex. 20 and in the plaint in this suit mentioned. The plaintiff must pay to the defendant the costs of the application to the Subordinate Judge and of both appeals in the same. As a suit has been instituted for mesne profits in the Subordinate Judge's Court, and a regular appeal in that suit is now pending in the Assistant Judge's Court, we make no order as to mesne profits.

We may state that we do not suppose that, if the Collector [295] were fully informed of the circumstances of this case as above detailed, he would have issued his certificate.

Having formed the opinion which we have expressed as to the construction of the Act, and as to the alienation being one which had the sanction of the Sub-Collector, we do not discuss the point as to the authority of the Bombay Legislature (specially circumscribed as it is) to direct the cancellation of decrees of the High Court made in rectification of decrees of Courts subordinate to it, or to prevent the reinstatement of persons against whom execution has been had of wrongful decrees of the latter Courts in the position occupied by them before such execution.

---

5 B. 295.

ORIGINAL CIVIL.

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

LUCKMIDAS KHIMJI (*Plaintiff*) *v.* MULJI CANJI (*Defendant*).*
[21st February, 1881.]

Small Causes Court—Jurisdiction—Equitable defence—Plea by defendant of his own fraud—Act IX of 1850, ss. 91, 98, 25.

The plaintiff in 1879 took out a summons, under s. 91 of the Presidency Town's Small Cause Court Act IX of 1850, calling on his nephew, the defendant, to deliver up possession of certain premises in his occupation belonging to the plaintiff. The plaintiff alleged that he had purchased the premises in question in 1870 from one N to whom the defendant had mortgaged them in 1866 with power of sale. The plaintiff produced the deed of mortgage to N; and the conveyance to himself. It was admitted on his behalf that he had never received any rent from the defendant, and never had manual possession of the premises occupied by him. But the plaintiff produced a writing of attornment dated April, 1873, passed to him by the defendant, whereby the latter acknowledged that he was occupying the premises in question as the plaintiff's tenant, and agreed to pay rent for the same at Rs. 25 a month. His defence was that the mortgage, the sale and the writing of attornment were all merely colourable, executed for the purpose of defeating his creditors and screening the property from execution; that no money had passed between the

* Suit No. 25320 of 1879.

1881
FEB. 21.

ORIGINAL CIVIL.

5 B. 295.

parties; that the defendant had never been out of possession, and that the plaintiff now required the Court to assist him in turning his own wrong to his own advantage. At the hearing in the Court of Small Causes the defendant proposed to prove the above facts, and submitted that, under the circumstances, a *bona fide* question of title was raised which ousted the jurisdiction conferred on the Court by s. 91. The Court, however, refused to receive the evidence, and held that it had jurisdiction. On reference to the High Court.

[296] *Held* that the defendant was entitled to set up the defence which he did, and that it ousted the jurisdiction of the Court of Small Causes to proceed further with the action—inasmuch as such defence raised a question of adverse title, which, in suits under s. 91 of Act IX of 1850, that Court had not jurisdiction to decide.

[R., 10 M. 17 (20); 18 M. 378; 20 M. 326; 32 M. 323=2 Ind. Cas. 616=5 M.L.T. 77.]

THE following case was stated for the opinion of the High Court, under s. 55 of Act IX of 1850, by N. Spencer, Second Judge of the Court of Small Causes at Bombay :—

"This is a summons issued under s. 91 of Act IX of 1850, calling on the defendant to show cause why he refuses to deliver up possession to the plaintiff of the second storey and the gable of a house assessed under Nos. 70, 71 and 73, situated in Hanuman Gully, belonging to the plaintiff, which is now occupied by the defendant as, it is alleged, the tenant of the plaintiff.

"2. The house in question was at one time the property of the defendant, and was, with other houses and lands belonging to him, mortgaged by him by a deed, dated the 8th of October, 1866, to one Nensey Hunsraj, to secure the repayment of the sum of rupees one hundred thousand and interest.

"3. Default having been made by the defendant in payment of the mortgage-debt, the mortgagee, under the power given to him by the deed, put up the properties for sale by auction, and the plaintiff, as the highest bidder, became the purchaser of the same. A copy of the deed of conveyance by the mortgagee to the plaintiff, dated 16th August, 1870, is annexed, marked A.

"4. It is admitted that on the 28th of April, 1873, the defendant passed to the plaintiff a writing (Ex. B) acknowledging that he was occupying the premises, from which it is now sought to eject him, as the plaintiff's tenant, and agreeing to pay him rent for the same at Rs. 25 per month.

"5. It is also admitted that, although he passed this agreement, the defendant has not paid the plaintiff any rent. No evidence was taken to account for no rent being exacted from him; but it was stated by the plaintiff's advocate that the reason was the relationship between the plaintiff and defendant, and because the defendant was in needy circumstances. The occupants of the parts of the house, other than those occupied by the defendant, [297] pay rent to the plaintiff; but this is done, according to the statement of the defendant's advocate, by defendant's permission and in furtherance of the scheme hereinafter mentioned.

"6. For the defendant it was alleged that he was a promoter of one of the financials which were started in Bombay in 1864, and that being liable to pay a large sum of money on account of calls due on the shares held by him, he, at the suggestion of the plaintiff, executed the mortgage of the 8th of October, 1866; that the mortgagee, Nensey Hunsraj, was but a nominee of the plaintiff, and the mortgage a colourable transaction for the purpose of defeating his creditors, no consideration having been paid by the mortgagee. That the subsequent sale by auction to the plaintiff

1881
FEB. 21.
ORIGINAL CIVIL.
5 B. 295.

was also fictitious, no portion of the purchase-money having been paid by the plaintiff, and that the agreement to pay rent was a part of the same scheme, made with the view of giving the transaction a *bona fide* appearance, and that the plaintiff was only a trustee of the property for the defendant.

" 7. The defendant's advocate contended that, under these circumstances, there was a *bona fide* question of title in dispute between the parties which ousted the jurisdiction conferred on this Court by s. 91, and he proposed to call evidence to prove the facts stated in the preceding paragraph.

" 8. On the part of the plaintiff it was contended—

"1*st*. That the defendant was estopped from denying the plaintiff's title.

" 2*nd*. That the defendant was bound by the deed of mortgage and the writing, Ex. B, and could not be heard to say that they were executed as a part of a scheme to defeat his creditors.

" 3*rd*. That this Court's jurisdiction was only ousted when there was a question of title which could legally be raised, and that there was no question of title which could legally be raised in this case.

" 9. I was of opinion that there was no question of title involved in this case, so far as this Court was concerned, and I declined to receive the evidence tendered. I held that until the mortgage to Nensey Hunsraj and the conveyance to the plaintiff had been [298] set aside by a Court of competent jurisdiction, this Court was bound to regard these deeds as *bona fide*, and executed for valuable consideration ; that by these deeds the legal estate in the house had become vested in the plaintiff, and that by agreement B the defendant had acknowledged himself to be a tenant of the plaintiff, and that it was not within the province of this Court to receive the evidence proposed to be given.

" 10. I, therefore, gave judgment for the plaintiff, and directed that the defendant should quit and deliver up possession of the premises to the plaintiff, but, at the request of the defendant's advocate, this judgment was given contingent on the opinion of the High Court on the following point :—

'Was there such a question of title involved or raised in this case as to deprive this Court of the jurisdiction conferred on it by s. 91 of Act IX of 1850, and was the Court in error in refusing to receive the evidence tendered ?'

" 11. Pending the decision of the High Court on this question, the execution of the warrant of possession has been stayed."

Kirkpatrick, for the defendant.—The Court below was wrong in refusing to admit the defendant's evidence. Section 25 of Act IX of 1850 expressly provides that an equitable defence may be pleaded in the Small Cause Court. In a Court of Equity the evidence offered by the defendant would be admitted, and his defence, if proved, would be good ; *Ram Surun Singh* v. *Mt. Pran Peary* (1); *Sreemutty Debia* v. *Bimola Soonduree*(2); *Ashruf Sirdar* v. *Ranee Bhubo* (3); *Bowes* v. *Foster* (4) ; *Bone* v. *Ekless*(5); Taylor on Evidence (6th ed.), Vol. I, p. 108, s. 80. See, also, Indian Evidence Act (I of 1872), s. 92, Proviso I. If the facts we allege are proved, a question of title is raised, and the jurisdiction of the Court is ousted : *Nowla Ooma* v. *Bala Dharmaji*(6).

(1) 1 W. R. 156. On appeal 13 M. I. A. 551. (2) 21 W. R. 422.
(3) 25 W. R. 40. (4) 2 H. & N. 779. (5) 5 H. & N. 925. (6) 2 B. 91.

1881
FEB. 21.
ORIGINAL CIVIL.
5 B. 295.

The Hon *F. L. Latham* (Acting Advocate-General), for plaintiff.—The plaintiff denies the fraud alleged by the defendant, but this case must be argued as if the statements of the defendant were true. The question here arises on the ejectment sections of [299] the Act, and the dispute is as to the right to possession, not as to the title. The plaintiff rests his claim on a mortgage-deed, a conveyance and a writing of attornment, all of which are admitted by the defendant. The plaintiff is the legal owner, and has a right to obtain possession under s. 91. This section is borrowed from English County Courts Act, 9 and 10 Vic., c. 95, s. 122. See also 19 and 20 Vic., c. 108, 50. The English cases apply: *In re Fearon* v. *Nowall* (1); *Lilley* v. *Harvey* (2); *Loyd* v. *Jones* (3). See, also, *Dadabhai* v. *Kuverbai* (4). Even if the defendant proved the facts he alleges, they would be no defence. The Judge was, therefore, right in excluding evidence of them: *Doe d. Roberts* v. *Roberts* (5); *Bessey* v. *Windham* (6); Kerr on Fraud, p. 306. Where documents are produced giving an apparent title, the party who seeks by his evidence to render them of no effect is to be regarded as invoking the aid of the Court, and such aid the Court will not give in case of fraud. Equity would not restrain such an ejectment suit as this: *Curtis* v. *Perry* (7); *Brackenbury* v. *Brackenbury* (8); *Cecil* v. *Butcher* (9); *Groves* v. *Groves* (10). It is true that s. 25 of Act IX of 1850 allows equitable defences, but that section refers only to cases in which a final decision upon the rights of the parties is given—not to cases under s. 91 in which there is no such final decision, but only a provisional possession awarded.

JUDGMENT.

WESTROPP, C.J.—This is a reference from Mr. Spencer, one of the Judges of the Court of Small Causes at Bombay, in a suit brought in that Court under s. 91 of Act IX of 1850, whereby the plaintiff sought to eject the defendant from the second storey and another portion of a house in Hanuman Gully in this island.

The defendant was originally the owner of the whole house and of considerable other immoveable property, and being so, mortgaged the same by deed of the 8th of October, 1866, to a fellow casteman (as has been admitted at the Bar), one Nensey [300] Hunsraj, for one lakh of rupees, repayable with interest. Under a power of sale contained in the mortgage-deed, Nensey Hunsraj, on the ground that default had been made in payment of the money purported to be secured by the mortgage, put up the whole of the mortgaged premises for sale by public auction, at which the plaintiff, being the highest bidder, became the purchaser, and the mortgaged premises were conveyed to him by Nensey Hunsraj under date the 16th August, 1870. The price was Rs. 65,000 as stated in that conveyance. It is admitted that the mortgage and conveyance were registered. It is also admitted that on the 28th of April, 1873, the defendant executed and gave to the plaintiff a Gujarati writing on a stamp of Re. 1-8, whereby he acknowledged himself tenant to the plaintiff, at Rs. 25 *per mensem*, of the second storey and loft, the subject of the present suit. That instrument, it is admitted, was not registered. The learned Judge states that, notwithstanding the Gujarati agreement just mentioned, it is admitted that the defendant has not paid any rent to

(1) 17 L.J.Q.B. 161.
(2) 17 L.J.Q B. 357.
(3) 17 L.J. C.P. 206.
(4) 10 B.H.C.R. 386.
(5) 2 B. & A. 367.
(6) 6 Q.B. 166.
(7) 6 Ves. 739.
(8) 2 Jac. & W. 391.
(9) 2 Jac. & W. 565.
(10) 3 Y. & J. 163.

1881
FEB. 21.
ORIGINAL CIVIL.
5 B. 295.

the plaintiff. No evidence in explanation of this fact was given on behalf of the plaintiff, but his advocate said that the reason for such non-payment was the relationship between the plaintiff and defendant and the needy circumstances of the latter. The relationship was, at the Bar here, stated to be that the defendant is nephew of the plaintiff. The occupants of the parts of the house, other than those occupied by the defendant, pay rent to the plaintiff; but this, it was stated on behalf of the defendant, was merely in furtherance of the general scheme, the existence of which the defendant alleged as his defence, and was refused permission to prove.

The defendant alleged, and sought permission in the Court of Small Causes to prove, that the mortgage of 1866, the sale and conveyance of 1870, and the Gujarati writing of 1873 were merely colourable transactions entered into for the purpose of securing the property, the subject thereof, from expected claims against the defendant, who had been a promoter of one of the financial associations in Bombay in 1864, and in that capacity had become liable to pay a large sum of money in respect of calls on shares held by him; that this scheme was devised by the plaintiff; that Nensey Hunsraj, the ostensible mortgagee, was the creature and [301] nominee of the plaintiff, and that the plaintiff was no more than a trustee of the property for the defendant. Under these circumstances, it was contended for the defendant that there was a *bona fide* question as to the title which excluded the jurisdiction of the Court of Small Causes under s. 9 of Act IX of 1850.

For the plaintiff it was contended that—

1. The defendant could not be permitted to deny the plaintiff's title.

2. That the defendant was, by the mortgage of 1866 and the Gujarati writing of 1870, estopped from making his proposed defence.

3. That the jurisdiction of the Court of Small Causes was only ousted when there was a question of title which could legally be raised, and that there was no question of title which could legally be raised in this case.

The learned Judge was of opinion "that there was no question of title involved in this case so far as his Court was concerned, and he declined to receive the evidence tendered." He "held that, until the mortgage and conveyance had been set aside by a Court of competent jurisdiction, the Court of Small Causes was bound to regard those deeds as *bona fide*, and executed for valuable consideration; that by those deeds the legal estate in the house had become vested in the plaintiff, and that by the Gujarati writing the defendant had acknowledged himself to be a tenant of the plaintiff, and that it was not within the province of that Court to receive the evidence proposed to be given." Judgment was then given for the plaintiff, contingent on the opinion of the High Court on this point—"Was there such a question of title involved or raised in this case as to deprive the Court of Small Causes of its jurisdiction under s. 91 of Act IX of 1850, and was that Court in error in refusing to receive the evidence tendered?"

It is perfectly settled that, under s. 91 of that Act, a Presidency Town's Court of Small Causes cannot try a question of adverse title. Thirty years ago it was so decided by the Supreme Court at Calcutta in *Hurrymonee Dosee* v. *Gopaul*-[302]*chundra Mookerjee* (1). We have not any reason to believe that the soundness of that decision was ever questioned. This Court followed that case in 1877 in *Nowla*

(1) 2 Taylor and Bell 57.

1881
FEB. 21.
ORIGINAL CIVIL.
5 B. 295.

Ooma v. *Bala Dharmaji* (1). But it has been argued that the adverse title set up by the defendant in such a suit, in order to exclude the jurisdiction of the Court, must be a title at law, and not any mere equitable defence. But s. 25 of Act IX of 1850 enacts that "all suits where the debt or damage claimed or value of the property in dispute is not more than Rs. 500, whether on balance of account or otherwise, may be brought in the Court of Small Causes; and all such suits brought in the said Court shall be heard and determined in a summary way; and every defence which would be deemed good in the Supreme Court sitting as a Court of Equity shall be a good bar to any legal demand in the Court of Small Causes." This, no doubt, is not a suit under s. 25; but it will be perceived that the equitable defence permitted by s. 25 does not appear to be confined to suits brought under that section. It is not there said that an equitable defence shall be a good bar *in such suits as aforesaid, viz.*, in suits brought under that section, but that it "shall be a good bar to any legal demand in the Court of Small Causes." The meaning of the word "demand" as used in Act IX of 1850 was considered by Peel, C.J., in *Radhamoney Boystomey* v. *Anandomaye Dabey* (2). His observations have been transcribed in *Walji Karimji* v. *Jaganath Premji* (3), in which latter case the meaning of the same word "demand," as well in Act IX of 1850 as in Act XXVI of 1864, was much considered, and it was held to comprise within its scope all suits in respect of immoveable property which might be brought under those Acts. The preamble of Act IX of 1850, as styled by Peel, C.J., or, more properly, its title, *viz.*, "An Act for the more easy recovery of small debts and demands in Calcutta, Madras, and Bombay," was under the term "demands" regarded by him as referring to the recovery of things in specie—chattels as well as lands and houses. Further s. 37 of Act IX of 1850 enacted that "the Judges of the Court shall be empowered to determine all [303] questions as well of fact as of law or equity as determined in the Supreme Court in all cases which they have authority to try."

Now, although those Judges have not authority finally to determine, in cases under s. 91, any question of adverse title, either legal or equitable, yet it is competent for a defendant in a suit under that section to set up an adverse title, either legal or equitable, in bar of the demand, *i.e.*, the action. The Court of Small Causes cannot determine whether either of those titles is good, but it may, and indeed must, determine, in order to ascertain whether or not its jurisdiction to proceed with the suit is ousted, whether an actual question of title has been set up. The averment, by way of defence, of facts which do not amount to an allegation of title would not oust the jurisdiction under s. 91. *Dadabhai* v. *Kuverbai* (4). The defendant in that case put forward the intention of her husband to make a settlement on herself and her children. The Court, after saying that did not amount to an allegation of title, was careful to add: "It is no assertion of an agreement or contract *or trust* or other legal or *equitable* liability to convey to or hold the premises for the benefit of the defendant Kuverbai and her children." In speaking of s. 91, Peel, C.J. (5), says: "The value of possession where there is no title is so well known that it would be quite unreasonable to suppose that it had escaped the notice of the Legislature, or, that, when they reserved to another tribunal or trial this decision of title (6), they meant to invert the position of the several claimants, to

(1) 2 B. 91. (2) 2 Ind. Jur. 146. (3) 2 B. 84 (88, 89).
(4) 10 B.H.C.R. 386. (5) 2 Taylor and Bell at pp. 58, 59.
(6) See sec. 98, Act IX of 1850.

1881
FEB. 21.

ORIGINAL CIVIL.

5 B. 295.

displace one from the possession and to put in another whose claim, had he been in the position of a plaintiff, might not have been capable of proof, or might have been subjected also to some defect." In *Nowla Ooma* v. *Bala Dharmaji* (1) the defendant, whom it was sought to eject from a room in a house, was, as the defendant is here, attacked upon deeds executed by himself, *viz.*, a mortgage and a further charge, to both of which he admitted his signatures. He had formerly been, as the defendant was here, owner of the whole house. Neither of these documents had been set aside by a Court of competent jurisdiction, nor had a deed of sale executed under a power of sale contained in the mortgage. Thus far the two [304] cases coincide. The defence in Nowla Ooma's case was fraud in obtaining from the defendant the mortgage and deed of further charge. The late Chief Judge of the Small Cause Court held that to be such a defence as ousted the jurisdiction of his Court, and his view was affirmed by the High Court. The defence in the present case is that the mortgage, the sale and the writing of attornment were all merely colourable, executed to screen the property from execution, that no money passed between the parties, that the defendant has never been out of possession of the portion of the property now claimed, and that the plaintiff has come into Court to ask it to aid him in turning his own wrong to his own advantage. It is difficult to suppose that the Legislature could by s. 91 have intended to assist, under such circumstances as alleged here, a plaintiff, never in possession, to turn out the defendant and put him to his action on the title to recover the premises, and thus shift from the plaintiff to the defendant the burden of the attack. Were we to do so, we think that we should act at variance with Sir L. Peel's view of the scope of that section and with the decision of this Court in *Nowla Ooma* v. *Bala Dharmaji* (1). It must be remembered that the parties are Hindus, and that, if the defendant's case be true, the plaintiff has never had even a technical possession, inasmuch as the writing of attornment is a mere sham. Actual possession, either manual or by payment of rent, it is admitted that the plaintiff never had. It does not appear to us that it was the intention of the Legislature, that, when a defendant makes such a contention as the defendant does here, the Court of Small Causes should use s. 91 to give to the plaintiff an advantage which he never previously had, *viz.*, possession. The parties here are *in pari delicto*, if the defendant's allegations be true, and, under such circumstances, even at law, *potior est conditio defendentis*. The plaintiff's counsel has relied on *Doe d. Roberts* v. *Roberts* (2) to the contrary; but, looking to the cases collected by Mr. Pit Taylor in para. 80, p. 108 of the 1st vol. of his Treatise on Evidence (3), it seems doubtful that even in a Court of common law that case would now be followed. Where there was an action on a bond of fair aspect, but really given to induce a prosecutor of an indictment for perjury to withhold his evidence, [305] Wilmot, C. J., said: "The manner of the transaction was to gild over and conceal the truth, and whenever Courts of law see such attempts made to conceal such wicked deeds, they will brush away the cobweb varnish and show the transactions in their true light" (4). It is an indisputable proposition that as *against an innocent party* "no man shall set up his own iniquity as a defence any more than as a cause of action" (*Per* Lord Mansfield, 1 Wm. Blackstone's Rep., 364). Where, however, a contract or deed is made for an illegal or immoral purpose, a defendant,

(1) 2 B. 91.
(2) 2 B. & A. 367.
(3) 6th ed.
(4) *Collins* v. *Blantern*, 2 Wils. at p. 349.

1881
FEB. 21.
ORIGINAL CIVIL.
5 B. 295.

against whom it is sought to be enforced, may show the turpitude of both himself and the plaintiff, and a Court of Justice will decline its aid to enforce a contract thus wrongfully entered into. "The objection that a contract is immoral or illegal as between plaintiff and defendant sounds at all times very ill in the mouth of the defendant. It is not for his own sake, however, that the objection is ever allowed, but is founded on general principles of policy, which the defendant has the advantage of" (*Per* Lord Mansfield, Cowper's Rep. 343). It is on this principle that defendants in suits on contracts, ostensibly *bona-fide*, are permitted to show that those contracts really are mere wagering transactions. In *Ram Surun Singh* v. *Mt. Fran Peary* (1) the Privy Council say: "It is impossible to treat this deed of conditional sale and mortgage as creating any estoppel. *It is sought to be enforced by a person out of possession.* It is, in truth, the case of a common mortgage on which the defendant says there never was the money advanced. It is open to a mortgagor in this country to deny that the money, the receipt of which is generally acknowledged under his hand and seal, was advanced, and to cut it down to a nominal sum or nothing. That being so, and the instrument being relied upon by a person out of possession seeking to obtain possession through the medium of a foreclosure suit, it appears to their Lordships that there is nothing whatever to prevent the defendant from showing the real truth of the transaction." As to the objection that a tenant may not deny his landlord's title, there is not any tenancy whatever between the plaintiff and defendant here if the latter's defence be true, and the plaintiff, so far from being the landlord, is the trustee of the defendant.

[306] We think that the Small Cause Court was in this case deprived of jurisdiction under s. 91 of Act IX of 1850 by the defence set up by the defendant. The judgment of that Court should be reversed, and the suit should have been dismissed for want of jurisdiction.

The parties respectively should bear their own costs of the suit and reference.

Attorney for the plaintiff.—Mr. *H. W. Payne.*

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

---

5 B. 305.

APPELLATE CIVIL.

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

JADOW MULJI (*Plaintiff*) *v.* CHHAGAN RAICHAND, DECEASED, BY HIS SON JAMNA, MINOR, BY HIS GUARDIAN, *ad litem* WANMALI HARJIVAN (*Defendant*).* [8th March, 1881.]

Administrator of a minor's estate—Guardian ad litem*—Next friend—Minors' Act, XX of* 1864, *s.* 2—*Civil Procedure Code* (*Act X of* 1877), *ss.* 443, 456, 458—*Act XII of* 1879—*Act X of* 1876, *s.* 15—*Act XV of* 1880, *s.* 3, *cl.* (*b*)—*Courts of Small Causes —Jurisdiction.*

Where no administrator of the estate of a minor is appointed under Act XX of 1864, there is no objection to the appointment of a guardian *ad litem* under s. 443 of the Civil Procedure Code (Act X of 1877) (as amended by Act XII of 1879) for the purpose of defending a suit against the minor.

---

* Small Cause Court Reference, No. 1 of 1881.

(1) 13 M.I.A. 551 at p. 559.