THE

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ORIGINAL CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Latham.

1883. Dec. 14.

MERWA'NJI NOWROJI BY HIS CONSTITUTED ATTORNEY HORMUSJEE CURSETJEE (PLAINTIFF)* *v.* ASHABAI, LEGAL REPRESENTATIVE OF THE LATE HA'JI ADAM HA'JI ISMA'IL HABIB (DEFENDANT).

Judgment—Small Cause Court—Suit in Small Cause Court on a judgment of the Small Cause Court—Presidency Small Cause Courts Act (XV of 1882), *Sections* 1, 4, 94—*Limitation Act XV of* 1877, *Schedule II, Articles* 122, 179.

A judgment-creditor in the Court of Small Causes had not before the 1st July 1882 the right to sue in that Court on his judgment.

CASE stated for the opinion of the High Court under section 69 of Act XV of 1882, by W. E. Hart, Esq., Chief Judge of the Court of Small Causes, Bombay:—

1. Merwánji Nowroji above named, on the 11th December, 1876, obtained against Háji Adam Háji Ismáil Habib above named, in the Court of the late First Judge of this Court, a decree for Rs. 909-13-9, payable within eight days.

2. The said Háji Adam died without having satisfied the said decree or any part thereof.

3. The plaintiff, as the constituted attorney, of the said Merwánji Nowroji, on the 14th February, 1883, instituted the

* Suit No. 3957 of 1883.

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present suit against the defendant as the widow and heir and legal representative of the said deceased judgment-debtor for the purpose of recovering from her the amount of the said decree.

4. This suit came on for hearing before me on the 12th March, 1883, when the only defence raised by the defendant's attorney was that of jurisdiction, he contending that no suit was maintainable in this Court on a judgment.

5. This suit was instituted after the 1st July, 1882, on which day came into force the Presidency Small Cause Courts Act (XV of 1882).

6. Section 94 of that Act provides that no suit shall lie on any decree of the Small Cause Court. But section 1, para. 2, provides that nothing contained in the Act shall affect the rights or liabilities of any person under any decree passed before 1st July, 1882. If, therefore, before the coming into operation of Act XV of 1882, a judgment-creditor had the right to sue in this Court on a decree of this Court passed before 1st July, 1882, that right would not be taken away by Act XV of 1882, and section 94 would operate only to prevent the institution of a suit on a decree passed after 1st July, 1882; consequently, the present suit would not be barred, the decree on which it is based having been passed before 1st July, 1882.

7. The defendant's attorney, however, contended that no suit ever had lain in this Court on a judgment of this Court, and this was accordingly the only point submitted for my determination in the present case.

8. I can find no reported case exactly in point, but the invariable practice of this Court since its institution more than thirty years ago has been to allow such suits as the present.

9. In *Berkeley* v. *Elderkin*[1] and *Austin* v. *Mills*[2] it was held that no action lay in the superior Courts at Westminster on a judgment of an English County Court constituted under 9 and 10 Vict., c. 95, apparently on the ground that the Legislature intended by that statute to confine the remedy of a judgment-creditor in enforcing his judgment to the procedure in execution provided

(1) 1 E. & B., 805.

(2) 23 L. J. Exch., 40.

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by the statute. And Act IX of 1850, constituting the Small Cause Courts in India, in some of its provisions is very like the statute 9 and 10 Vict., c. 95 (see *Moonshi Golám* v. *Curreembux*[1].)

10. The Indian cases that I have been able to find most nearly bearing on the point are these:—*Mancharám* v. *Bakshe Sáheb*[2], *Kisan Nandrám* v. *Anandrám Bacháji*[3], *Fakirapá* v. *Pándurangápá*[4], *Bhavánishankar* v. *Parsadri*[5]. Of these, the second and third have very little, if any, bearing on the present case, because they were decided simply on the ground that the suits there in question were barred by express provisions of the Legislature (Act XXIII of 1861, section 11, and Act X of 1877, section 244), which never had any application in this Court. The first decided that a suit did not lie in the Small Cause Court at Surat on a decree of the Court of the Principal Sadar Amin; the fourth that an action did not lie in a Mofussil Small Cause Court on the judgment of a Court in a Native State.

11. It will thus be seen that the precise point now in question has never been determined, viz., whether, before the coming into operation of Act XV of 1882, an action lay on its own decree in the Presidency Small Cause Court. There are, no doubt, both in the English and the Indian cases mentioned above, remarks by the Judges deciding them which may be said to have some applicability to the present case. But one must always be cautious in applying remarks made in deciding a particular point arising under one condition of circumstances to the decision of a different point arising under another condition of circumstances; especially is this so when, as in the present case, these remarks, which are to be taken as an authority for the establishment of a certain proposition, are made in two sets of Courts, which adopted a different *ratio decidendi* and followed a different practice.

12. In the English cases the question was not whether an action lay in the County Court on its own decree, but whether an action lay in the Superior Court on the judgment of the County Court. That question was answered in the negative

(1) I. L. R., 5 Cal., 294.
(2) 6 Bom. H. C. Rep., 231, A. C. J.
(3) 10 Bom. H. C. Rep., 433.
(4) I. L. R., 6 Bom., 7.
(5) I. L. R., 6 Bom., 292.

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in England on the ground that the defendant would be subjected to a greater liability in execution in the action on the judgment than he would in the original action. If these two English cases were a direct authority for anything, it would be for the proposition that, before the passing of Act XV of 1882, no suit lay in the High Court on a decree of this Court; but, as to this, we know it was well established in practice that suits should be maintained in the High Court on judgments of this Court for the very purpose of obtaining execution against immoveable property which could not be touched in execution by this Court. Indeed this has been expressly stated in more than one of the Indian judgments which I have above mentioned. This fact alone makes it well nigh impossible, in my mind, to apply to the present case the reasoning on which the decision of the English cases was based. The English cases held that a suit in the Superior Courts would not lie, because the remedy in execution under the County Courts Act was sufficient. The Indian cases held that a suit in the Superior Courts will lie, because the remedy by execution under Act IX of 1850 is not sufficient. If, then, the provisions of this Act are not sufficient to take away by necessary implication the right of suing in a Superior Court, on what principle can they be held to be sufficient to take away the right of suing in the Court in which the decree was passed?

13. The case of *Manchárám* v. *Bakshe Sáheb*[1] decided that a suit did not lie in the Small Cause Court at Surat, not on its own decree, but on a decree of the Principal Sadar Amin. Neither of the Acts constituting or regulating the procedure of those two Courts applied to this Court. The grounds of the decision seem to have been these:—First, that the decree sued on was the decree of a Court regulated by the Civil Procedure Code, which in itself contained the amplest provisions for execution without the necessity of resorting to a second suit. Second, that the Mofussil Small Cause Court could not give the plaintiff so ample a remedy in execution in the second action as he had in the first; and third, that to allow such an action would allow the evasion of those provisions of the Limitation Act which provided that the judgments and decrees of Civil Courts should be enforced within

(1) 6 Bom. H. C. Rep., 231, A. C. J.

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certain periods. It is clear that neither of the first two grounds have any application to the present case, the first, because the decree here sued on was not a decree under the Civil Procedure Code, and the provisions for execution under Act IX of 1850 were not nearly so ample as those of the Civil Procedure Code, which did not apply to this Court; the second, because the second action is brought in the same Court as was the first. As to this ground, moreover, it is to be noticed that the reasoning is the exact converse of, that in the two English cases cited above. In the English cases it was held that the second action could not lie in another Court, because it would give the plaintiff a greater remedy than he had under the first. In the Indian case it was held that the second action would not lie in another Court, because it would give the plaintiff a less remedy than he had in the first. In the present case the second action is brought in the same Court as the first. As to the third ground, it seems to me to apply with almost equal force against the bringing of an action on a promissory note or acknowledgment, the consideration for which is the amount of an unsatisfied decree. Moreover, the Limitation Act XV of 1877, schedule II, art. 122, provides a period of twelve years within which to sue on a judgment obtained in British India, without limiting such suit to a suit in the High Court on a decree of the Small Cause Court. Even if it were the intention of the Legislature that such suit should be so limited (as seems to be suggested in some of the Indian cases I have cited) it would then follow that the Legislature intended expressly to overrule the applicability to the Courts of this country of the two English cases I have above cited from the Law Journal. The result would be the dilemma which I have pointed out in para. 12.

14. In the case of *Bhavánishánkar* v. *Pursadri*[1], Melvill, J., no doubt, is reported to have said "except in this peculiar case (*i.e.*, of an action in the High Court on a judgment of the Presidency Small Cause Court) it must be taken to be settled that a suit will not lie in our Courts upon the judgment of any Court in British India." But the context shows that he was referring to the case of *Manchárám* v. *Bakshe Sáheb*[2] was basing his argu-

(1) I. L. R., 6 Bom., 294. (2) 6 Bom. H. C. Rep., 231, A. C. J.

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ments on the completeness of the remedy in execution afforded by *the Civil Procedure Code, and that the* Courts which he had in his mind were the Courts whose procedure is regulated by the provisions of that Code. This, taken in connection with the fact that the point before him for decision was not the same as it is in the present case, leads me to doubt if his remarks are so strong an authority as they at first sight seem for the decision of the present case.

15. The result of the cases then appears to be this :—There is no case exactly in point. The remarks in the English cases, which might otherwise be regarded as an authority against the admissibility of the present suit, cannot be applied at all, because in the one *only point on which those cases can be regarded* as a direct authority, an exactly opposite practice has been followed, based upon exactly converse reasoning. The like remarks in the Indian cases go no further than this, that in Courts regulated by the Civil Procedure Code (which this Court was not) actions on judgment do not lie, either because they are expressly forbidden by certain statutory enactments (having no applicability to this Court) or by necessary implication arising from the completeness of the remedy by execution under the Civil Procedure Code. But *those sections of the Civil Procedure* Code had no applicability here, and the remedy by execution under Act IX of 1850 was not nearly so complete as that in other Courts under the Civil Procedure Code. To argue from the fact that because from litigants under the Civil Procedure Code the right of action on judgment has been implicitly taken away by reason of the completeness of their remedy in execution, therefore the same right has been taken away from litigants under Act IX of 1850 (whose remedy in execution is admittedly not so complete), seems to be too long a step in the absence of authority to hold that the remedy in execution under Act IX of 1850 is proportionately as sufficient for litigants under that Act as the remedy in execution under the Civil Procedure Code is for litigants under that Code. For the reasons above stated the remarks in the English cases on the sufficiency of the remedy in execution under the County Courts Act cannot be taken to afford such authority.

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16. Parke, B., in *Williams* v. *Jones*(1) explains the principle on which a decree-holder has a right of action on his judgment. In fact at Common Law, under the old rule, if a year and a day elapsed after judgment the plaintiff was bound, in a personal action, to sue on his judgment (see Archbold's Practice, 1011, Title Fieri Facias). By article 122 of the second schedule to the Limitation Act (XV of 1877) the Indian Legislature appears to have acknowledged the existence of such a right. That right was clearly not taken away by express legislation before the enactment of XV of 1882. Whether it was taken away by necessary implication under Act IX of 1850 is very doubtful. The authorities for holding that it was, are of doubtful applicability. On the other hand a long course of practice, extending over upwards of thirty years, ever since the establishment of this Court in 1850, shows that judges, advocates and litigants have all concurred in acquiescing in the legality of such an action as the present. In Calcutta, too, we find that the 34th Rule of the Court, passed in 1850 with the approval of the Judges of the Supreme Court, obliges the plaintiff to bring an action on his judgment if he has not succeeded in levying execution within three years.

17. In these circumstances, being of opinion that the burden of showing that a pre-existing right of action had been taken away by necessary implication under the provisions of Act IX of 1850, lay on the defendant who alleged it, I held, in accordance with the rule laid down by Westropp, C. J, in *Fakirapá* v. *Pándurangapá* (2) that I ought to follow what I found to be a long established course of practice hitherto undisturbed and unquestioned. I accordingly entered a verdict for the plaintiff for the amount of the claim and certified his professional costs Rs. 34. At the request of the defendants' attorney, however, that verdict was entered subject to the opinion of the High Court on the question whether before the 1st July, 1882, a judgment-creditor in this Court had the right to sue in this Court on his judgment. If that question be answered in the affirmative, the present verdict must stand. If the answer be in the

(1) 13 M. & W., 628. (2) I. L. R., 6 Bom., at p. 10.

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negative, the present verdict will be reversed, and the action be dismissed for want of jurisdiction, with costs of the defendant's attorney.

Starling for the plaintiff.
Jardine for the defendant.

The following authorities were recited in argument:--*Manchárám Kalliándás* v. *Bakshe Sáheb*(1), *Sandes* v. *Jomir Shaikh* (2), *Moonshi Golám* v. *Curreembux* (3), *Berkeley* v. *Elderkin* (4), *Austin* v. *Mills* (5), *Attermoney Dossee* v. *Hurry Doso Dutt* (6), *Fakirápá* v. *Pándurangapá* (7), *Bhavánishankar* v. *Pursadrái* (8), *Umiáshankar* v. *Chhotálál*(9), *Abba Háji Ismáil* v. *Abba Thara* (10), *Ráj Bahádur Singh* v. *Achumbit Lál* (11), Archbold's Practice (12th ed.) 1122-1140, *Farrell* v. *Gleeson* (12), Act XIV of 1859, section I, Act XV of 1882, Act IX of 1871, arts. 121-167, Act XV of 1877, arts. 122, 179, *Williams* v. *Jones* (13).

LATHAM. J.—The question referred to us by the learned Judge of the Court of Small Causes is, whether before the 1st of July, 1882, the day on which the Presidency Small Cause Courts Act XV of 1882 came into operation, a judgment-creditor in the Small Cause Court had a right to sue in that Court upon his judgment; in other words, whether before the Act of 1882 came into operation a judgment of the Small Cause Court was a good cause of action in that Court.

There is no doubt of the general principle as laid down in *Williams* v. *Jones*(14) by Parke, B., whose words were adopted by Blackburn, J., in *Godard* v. *Gray*(15), that "where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum on which an action of debt to enforce the judgment may be maintained." The same principle is recognized by the Civil Law, where the action founded on the prior judgment is

(1) 6 Bom., H. C. Rep., A. C. J., 231.
(2) 9 Cal., W. R., Civ. Rul. 399.
(3) I. L. R., 5 Cal., 294.
(4) 1 E. & B., 805.
(5) 9 Exch. 288, S. C., 23, L. J. Ex., 40.
(6) I. L. R., 7 Cal., 74.
(7) I. L. R., 6 Bom., 7.
(8) I. L. R., 6 Bom., 292.
(9) I. L. R., 1 Bom., 19.
(10) Ibid, 253.
(11) L. R., 6 Ind. Ap., 110.
(12) 11 Cl. F., 702.
(13) 13 M. & W., 628.
(14) 13 M. & W., at p. 633, per Parke, B.
(15) L. R., 6, Q. B., at p. 148.

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known as the *actio judicati*, Savigny: System, section 295. Now there is nothing in the character of the Small Cause Court Act which of itself deprives its judgments of this obligatory effect: *Wilkins* v. *Jones*.[1] The question is whether the Legislature has by express words or necessary implication precluded such effect from attaching to them.

The defendant's counsel relied on section 94 of the Small Cause Court Act of 1882, "no suit shall lie on any decree of the Small Cause Court." But by section 4, "Small Cause Court," as used in that Act, is defined to mean the Court constituted under the Act, *i. e.*, since the 1st of July, 1882. Moreover, section I expressly saves "the rights of any person under any decree passed before that day," and we cannot doubt that these words would include the right under an obligation arising from a judgment.

The next point taken by the defence was that the words of article 179 of the second schedule of the Limitation Act, XV of 1877, amount to a legislative declaration that no proceeding can be taken in any form to enforce a decree after the expiration of the three (or, in case of registration, six) years mentioned in that article, which time has admittedly elapsed in the present case. But when we find that article 122 of the same schedule has given twelve years as the time within which a suit may be brought upon a judgment obtained in British India, we feel unable to restrict that period so expressly given by any inference to be drawn from article 179.

The question which really has to be considered is, whether there are provisions to be found in the Small Cause Court Acts which necessarily indicate the intention of the Legislature that the benefit of a judgment of the Small Cause Court shall be had only in the way provided by the Acts, and not by a suit to be brought upon the judgment. There is nothing extraordinary in the supposition that such provisions may exist, for as Savigny has pointed out in the section above referred to, the *actio judicati* is only another form of execution; and it is easily conceivable that the Legislature may in its preference for some particular mode or modes of execution exclude all others.

(1) 13 M. & W., 628.

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The defendant relies on the authority of two English decisions, *Berkeley* v. *Elderkin*(1), and *Austin* v. *Mills*(2) in which it was decided that no action lay in the superior Courts on a judgment in a County Court created by 9 and 10 Vict., c. 95. In the former case the Queen's Bench came to this conclusion on the ground that the Legislature had sufficiently indicated its intention that the remedy on the judgment of a Court constituted under that Act was to be confined to the remedies specifically provided by the Act. This decision was adopted, though apparently not without some hesitation, by the Court of Exchequer in the latter case; and it does not appear to have been subsequently questioned in England. Indeed section 49 of 19 and 20 Vict., c. 108, seems to have been passed with distinct reference to the rule laid down by these decisions. The High Court of Calcutta in *Moonshi Golam Arab* v. *Curreembux Shaikhjee*(3) held the cases above cited to be directly applicable in India, and accordingly refused to allow a suit to be brought in the High Court on a judgment of the Small Cause Court. On the other hand it is said that the special provisions in the County Courts Act on which the English judgments proceeded are not to be found in Act IX of 1850, and that the Court of Common Pleas in Ireland in *Carey* v. *Grispi*(4) after having been equally divided in the previous case of *Moffatt* v. *Burrowes*(5), refused to apply these judgments to the case of a judgment brought in a superior Court on a Civil Bill decree. This Irish decision was followed by Kennedy, J., in *Khobláll Báboo* v. *Rámchunder Bose*(6), a decision which was overruled by Garth, C. J., and White, J., in the case of *Moonshi Golám Arab* v. *Currembux Shaikhji*(3) above referred to. The Irish decisions proceed upon the provisions of the Civil Bill Act 14 and 15 Vict., c. 59; and we think that the language of the Indian Small Cause Court Act more closely resembles that of the English County Courts Acts than that of the Irish Civil Bill Act. Section 69 of Act IX of 1850 closely follows section 69 of 9 and 10 Vict., c. 95; and section 71 of Act IX of 1850 contains a very similar

(1) 1 E. & B., 805.
(2) 9 Ex., 288.
(3) I. L. R., 5 Cal., 294.
(4) 9 Irish C. L. R., 25.
(5) 4 Irish. C. L. R., 297.
(6) I. L. R., 2 Cal., 434.

power of altering the mode of payment ordered by the judgment to that contained in section 100 of 9 and 10 Vict., c. 95: and it was on sections 96 and 100 of the English Act that Lord Campbell's judgment in *Berkeley* v. *Elderkin*[1] principally proceeded. There was also a limitation of the term of imprisonment of a judgment-debtor contained in section 60 of Act IX of 1850, which at the time of its enactment had no parallel in the case of a judgment of the Supreme Court, and was more stringent than the limitation contained in the Code of Civil Procedure of 1859. But we cannot fail to see that the Irish decisions are really based on a disapproval of the two English cases, which the Irish Judges considered could only be supported on the ground that the decision of the County Court was not a final one. No doubt words were used by Lord Campbell from which it might be inferred that he considered the judgment of a County Court to be only interlocutory; but it had been distinctly stated by the Court of Common Pleas two years before the decision of the earlier of the Irish cases that such an inference was incorrect, and that the judgment of a County Court was final and complete so that the question decided by it could not be again litigated. There is then a conflict of opinion between the Irish and English Courts; and great as is our respect for the decisions of the Judges in Ireland, we think that still higher respect is due to those of the Judges in Westminster Hall, whose reasoning appears to us to apply to the provisions of Act IX of 1850.

Two other Indian decisions may be relied on in support of the plaintiff's contention. The first is that of *Jussorat Khán* v *Kanyaláll Dey* given at p. 147 of Thomson's Edition of the Limitation Act XIV of 1859 (2nd ed.), where Phear, J., held that a suit would lie in the Small Cause Court on an unsatisfied judgment of that Court. His judgment, however, proceeded on the assumption that the English cases did not apply, as being founded on the principle that the judgments of the County Courts were not final. This assumption is, as we have pointed out, incorrect; and we think that the decision itself must be taken to have been overruled in the case of *Moonshi Golám* v. *Curreembux*[2], though it does

(1) 1 E. & B., 805. (2) I. L. R., 5 Cal., 294.

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not seem to have been referred to there. The second case is that of *Mahomed Ghore* v. *Muster Ally*(1) where the High Court of Madras assumed that a suit would lie on a judgment of the Small Cause Court. The point, however, was not argued, the only question raised being that as to the proper period of limitation.

The strongest argument in the plaintiff's favour, and that on which the learned Judge of the Small Cause Court mainly relied, is that drawn from the practice of this Court in allowing suits to be brought in the High Court on judgments of the Small Cause Court, in which respect there is a conflict between the practice of this Court and that of the High Court of Calcutta. No doubt that practice was declared to be a settled one by Sir Michael Westropp in the course of his judgment in *Fakirapa* v. *Pándurangapa*(2), referring to an unreported decision of the Appellate Court in *Hemráj* v. *Virji*. But that decision, as quoted by him, simply laid down "that the practice of the High Court to entertain such suits was too long settled to be disturbed except by legislation or by Her Majesty's Privy Council, although it might have been better if such a practice had never been initiated." If it were clear that the judgment of a Small Cause Court constituted an obligation on which an action lay, it is hard to understand how there could be any question as to whether such an action should be allowed; or how, if allowed, it could be confined to obtaining execution of the Small Cause Court decree against immoveable property. It seems to us that the late Chief Justice entertained grave doubts as to the correctness of the practice which he held too long established to be disturbed by this Court, and we know those doubts were shared by Mr. Justice Green. We cannot help suspecting that the practice was introduced, without any careful consideration of the legal position, to remedy the hardship of a judgment-debtor's immoveable property being exempted from execution under a Small Cause Court decree although he might have no other property available to the creditor—a hardship remedied by the Legislature in England by 19 and 20 Vict., c. 108, sec. 49. We confess that we have great

(1) 4 Madras Jur., 127. (2) I. L. R., 6 Bom., at p. 10.

difficulty in finding any sound principle on which the origin of the practice can be justified; and we must decline to support the plaintiffs' contention in the present case by the inference which might otherwise have been drawn therefrom.

It has been argued that a suit may properly lie in the Small Cause here, or in the County Court at home, on its own judgment, though no such suit can lie in a superior Court. But we can see no reason for drawing such a distinction. The inconveniences which the Legislature is shown by the provisions of its enactments to have intended to obviate are nearly the same in either case And if an obligation giving a good cause of action is constituted by a judgment, we cannot see how that cause of action can exist in the inferior but not in the superior Court, unless such a limitation is imposed by express words or necessary implication, and we find neither here.

We may very shortly refer to the cases of *Manchárám Kalliándás* v. *Bakshe Sáheb*[1] and *Fakirápá* v. *Pándurangápá*[2]. We agree with the law laid down in these cases, and approved in *Bhavánishankar* v. *Pursadri*[3] that the provisions of the Civil Procedure Code preclude a judgment in a Court regulated by that Code being enforced by separate suit; and we must therefore differ from Mr. Justice Wilson's decision in *Attermoney Dossee* v. *Hurry Doss Dutt*[4], an undefended case, that a suit may be instituted in the High Court on its own previous decree. But we admit that the question now before us cannot be taken to have been decided in those cases. The question there was as to the effect of the provisions of the Civil Procedure Code; here it is as to the effect of the provisions of the Small Cause Court Act. Still it is satisfactory to us to find that it did not occur to either Sir M. Westropp or Mr. Justice Melvill that such a suit as the present would lie, at a time when the point would naturally have suggested itself to them (see *Bhavánishankar* v. *Pursadri*[5]).

For the reasons above given, we answer the question proposed to us by the learned Judge of the Small Cause Court as follows:—

(1) 6 Bom. H. C. Rep., 231 A.C.J.
(2) I. L. R., 6 Bom., 7.
(3) I. L. R., 6 Bom., 292.
(4) I. L. R., 7 Cal., 74.
(5) I. L. R., 6. Bom., at p. 297.

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that a judgment-creditor in the Court of Small Causes had not before 1st July, 1882 the right to sue in that Court on his judgment.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice West.

September 3.

IN THE MATTER OF THE APPLICATION OF NARMADA'BA'I AND ANOTHER (ORIGINAL APPLICANTS), APPELLANTS.*

Act XX of 1864, Sections 6, 9 and 19—Mother appointed administratrix—Account of minor's estate after his death—District Court.

Where a mother is appointed administratrix to the estate of her minor son, under Act XX of 1864, section 6,

Held that, unlike a curator or other person appointed administrator under section 9, she is not bound to render an account, unless a suit should be instituted for the purpose, under section 19, by a relative, during the minority.

No application for account can be made after the death of the minor, though his representatives are entitled to an account. When the minor is dead, the District Court is no longer capable of representing him under the Act. The only way of calling the administrator to account is a suit instituted by a person interested.

THIS was an appeal from the decision of J. L. Johnstone, Acting District Judge of Khándesh, in application No. 37 of 1882.

On the 13th March, 1877, Narmadábái was appointed administratrix to the estate of her minor son Mádhavráv. On the 3rd March, 1882, Mádhavráv died, leaving him surviving his widow Anandibái and his mother Narmadábái. On the 31st March, the District Judge called upon Narmadábái to render an account of the minor's property during her administration of his estate. She and her daughter-in-law Anandibái thereon applied to the Court, stating that the certificate of administration granted to the former was no longer in force, and that she (Narmadábái) was not liable to render the account demanded by the District Judge. Mr. Johnstone rejected their application on the 20th July, 1882.

They appealed to the High Court.

* Appeal No. 70 of 1882 under Act XX of 1864.