APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

SHA'MLA'L AND OTHERS, (ORIGINAL DEFENDANTS), APPELLANTS, *v.* HIRA'CHAND, (ORIGINAL PLAINTIFF), RESPONDENT.* 1885. *October* 14.

Dekkhan Agriculturists' Relief Act XVII of 1879 *as amended by Acts XXIII of* 1881 *and XXII of* 1882—*Agriculturist, definition of—Change of definition between date of filing of suit and date of trial—Jurisdiction.*

Some time previously to the institution of this suit the defendants lived and carried on business as money-lenders at Yeola, a táluka not subject to the Dekkhan Agriculturists' Relief Act (XVII of 1879), and while there they became indebted to the plaintiff. Subsequently they removed to Kopargaon, in which district the said Act was in force. Both at Yeola and at Kopargaon they, in the course of their business, acquired land which they cultivated. In 1882 the plaintiff brought this suit against them in the Subordinate Judge's Court at Yeola to recover the debt due to him. The defendants contended that they were agriculturists, and could not be sued in the Court of the Subordinate Judge at Yeola. The suit came on for trial in July, 1883, at which date Act XXII of 1882 had come into force, which altered the definition of "agriculturist." The Subordinate Judge held that the defendants were agriculturists, and that he had no jurisdiction to try the suit. His decree was reversed by the District Judge, who held that the defendants earned their livelihood only partially, and not principally, from agriculture, and that the lower Court had jurisdiction.

The defendants appealed to the High Court, and contended that the definition of "agriculturist" to be applied in the case was that contained in Act XXIII of 1881, which was in force when the suit was instituted, and not that in Act XXII of 1882, which was in force at the date of the trial.

Held, that, having regard to the very special nature of the legislation embodied in section 12 of the Dekkhan Agriculturists' Relief (Act XVII of 1879) for the benefit of a particular and very limited class, it was intended by the Legislature that a person claiming the benefit of that section *at the trial* should fill the character of an agriculturist as then defined by law.

THIS was an appeal from an order of M. B. Baker, District Judge of Násik.

Prior to the institution of this suit the defendants had lived and carried on business at Yeola, a táluka to which the Dekkhan Agriculturists' Relief Act (XVII of 1879) had not been made applicable. The plaintiff in 1882 sued to recover a sum of money due on a *kháta* from the defendants, who had removed to Kopargaon, where the Dekkhan Relief Act was in force. The defendants contended that they were agriculturists, and, as such, were not liable

* Appeal No. 16 of 1885.

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to be sued in the Yeola Court. The Subordinate Judge of Yeola at the trial in July, 1883, held that he had no jurisdiction, and dismissed the plaintiff's suit.

The plaintiff appealed to the District Judge of Násik, who reversed the lower Court's order with the following remarks :—

"* * * * * The respondents formerly carried on business on a rather large scale as money-lenders at Yeola. The evidence shows that the outstandings due to them from Yeola are larger than those due from Kopargaon. In the course of their business they, as is usual, acquired land. Now they appear to have difficulty in collecting their dues, and they claim to be treated as agriculturists within the meaning of section 2 of the Dekkhan Agriculturists' Relief Act as amended by Act XXII of 1882. It is worthy of note that the respondents do not belong to the 'agricultural classes of the Deccan' for whose benefit the Dekkhan Agriculturists' Relief Act was passed. They are emigrants from Gujarát, and belong to the class whose proceedings led to the introduction of that Act. The cultivation of land was only a subordinate part of their business. The outstandings due to respondents must be regarded as assets until it is clear that they cannot be recovered, and these are the assets of a money-lender, not of an agriculturist. I cannot hold that they earn their livelihood principally by agriculture carried on within the districts subject to the Dekkhan Agriculturists' Relief Act merely because the land they hold in Kopargaon is of greater extent than that held in Yeola. * * * * * The Subordinate Judge's decree is reversed, and the suit is remanded for retrial on the merits."

From this order the defendants preferred an appeal to the High Court.

Máneksháh Jehángirsháh for the appellants.

Dáji Ábáji Khare for the respondent.

SARGENT, C. J. :—The suit in this case was instituted in the Court of Yeola in 1882, when the amendment introduced by section 4, Act XXIII of 1881(a) into the original definition of an agricultu-

(a) Act XXIII of 1881, section 4.—"Agriculturist means a person who, when or after incurring any liability the subject of any proceeding under this Act, by himself, his servants or tenants earned or earns his livelihood, wholly or *partially*, by agriculture carried on within the limits of the said district."

rist as given by Act XVII of 1879 by substituting "partially" for "principally" was in force. However, when the suit came on for trial in July, 1883, Act XXII of 1882(*b*) had come into force on 1st February, 1883, by which the definition was restored to the form in which it stood by the Act of 1879. The Subordinate Judge of Yeola held that the defendants derived their livelihood *principally*, though not wholly, from agriculture within the specified districts, and that, therefore, under section 11 of the Act of 1879, he had not jurisdiction to try the case. The Acting District Judge, Mr. Fulton, on appeal, directed fresh evidence to be taken by the Subordinate Judge on the question whether the defendants were agriculturists. On that evidence being sent up, the District Judge of Násik, Mr. Baker, found that the defendants earned their livelihood only partially, and not principally, by agriculture, and held that the Subordinate Judge of Yeola had authority to try the case. It has been contended before us that the District Judge ought to have tested the evidence by the definition of an agriculturist given by Act XXIII of 1881, which was in force when the suit was instituted, and not by the definition as restored by the Act of 1882.

The general rule is, as stated in Maxwell on Statutes, p. 193, that when the law is altered pending an action, the rights of the parties are decided according to the law as it existed when the action was commenced, unless the new Statute shows a clear intention to vary such rights. Here doubtless the change in the definition of an agriculturist not merely affected the jurisdiction of the Courts, which would be matter of procedure, but also the rights of the parties, inasmuch as upon it depended whether or no the case was to be tried on the merits in the exceptional manner provided by section 12 of Act XVII of 1879.

But we think that, having regard to the very special nature of the legislation which is embodied in section 12 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) for the benefit of a particular and very limited class, it must have been intended by

(*b*) Act XXII of 1882, section 3 :—"Agriculturist shall be taken to mean a person who by himself, his servants or tenants earns his livelihood wholly or *principally* by agriculture carried on within the limits of the said districts, or who ordinarily engages personally in agricultural labour within those limits."

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the Legislature that a person claiming the benefit of that section *at the trial* should fill the character of an agriculturist as then defined by law.

We must, therefore, confirm the decree. The parties to pay their own costs of this appeal.

Decree confirmed.

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Before Mr. Justice Birdwood and Mr. Justice Jardine.

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DA'MODHAR TIMA'JI GOSA'VI, (ORIGINAL DEFENDANT), APPELLANT, *v.* TRIMBAK SAKHA'RA'M, (ORIGINAL PLAINTIFF), RESPONDENT.*

Jurisdiction—Mofussil Small Cause Court—Act XI of 1865, *Secs.* 5, 21—*Appeal from the decree of a Subordinate Judge invested with the jurisdiction of a Small Cause Court.*

A suit was filed in the Court of a First Class Subordinate Judge invested with the powers of a Small Cause Court up to Rs. 500. The claim was for Rs. 530-7-3, as money had and received by the defendant to the plaintiff's use. The Subordinate Judge did not deal with the case under his Small Cause Court jurisdiction, but tried it as an ordinary suit, and gave the plaintiff a decree for Rs. 441-0-7. On appeal, the District Judge was of opinion that the claim had been recklessly overvalued, and he held, therefore, that the suit was one cognizable by a Small Cause Court, and that the appeal was barred.

Held, reversing the decision of the lower Appellate Court, that as the claim or "*demand*" exceeded Rs. 500—the pecuniary limit of the jurisdiction of a Court of Small Causes under section 5 of Act XI of 1865—and as the case was not "tried under" the Act, section 21 gave no finality to the decree of the Subordinate Judge, which was, therefore, appealable.

Lakshman Bhátkar v. *Bábáji Bhátkar*(1) distinguished.

SECOND appeal from the decision of E. M. H. Fulton, Acting District Judge of Násik, in appeal No. 151 of 1883 of his file.

This suit was instituted by the plaintiff, who alleged that he was entitled to the income of a certain *jághír* at Savaegaon; that the defendant managed the *jághír* for him, and should have paid over to him the income as it was received, after deducting the expenses of management. He alleged that the defendant had not paid him the whole of the net income for the years

* Second Appeal, No. 710 of 1884.

(1) I. L. R., 8 Bom., 31.