

will be granted, although executors have been named in the will. We see, therefore, no reason for putting a different meaning on the language of section 18 of the Act V of 1881 from what it cannot be doubted is the meaning of the same language in the Succession Act; and the District Judge was, therefore, right in granting letters of administration with the will annexed to the respondents.

Order confirmed.

APPELLATE CIVIL.

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

TURMUKLA'L HARKISANRA'I (ORIGINAL APPLICANT), APPLICANT, v.
KALYA'NDA'S KHUSHA'L (ORIGINAL OPPONENT), OPPONENT.*

1894.

January 3.

Civil Procedure Code (XIV of 1882), Sec. 285—Small Cause Court—First Class Subordinate Judge's Court—Grade—Small Cause Court inferior in grade to First Class Subordinate Judge's Court—Decree—Execution—Attachment and proclamation of sale in execution of decree of Small Cause Court—Subsequent application for execution of decree of First Class Subordinate Judge—Validity of sale by Small Cause Court.

Gumna obtained a decree against Máneklál in the Small Cause Court of Surat and in execution he attached a debt due to Máneklál, and a proclamation of sale was duly issued. Before the sale took place, however, one Kalyándás applied to the First Class Subordinate Judge for execution of a decree which he had obtained against Máneklál in that Judge's Court, and the same debt was then attached. The proceedings, however, under the Small Cause Court decree were continued, and the debt was sold in execution and was purchased by the applicant.

Held, following Pátel Naranji v. Haridás(1), that the sale by the Small Cause Court was not rendered invalid by the subsequent proceedings in the First Class Subordinate Judge's Court.

The term "grade" in section 285 of the Civil Procedure Code (Act XIV of 1882) has the same meaning as it had in section 5 of the Code (Act VIII of 1859),—that is, it depends upon "the pecuniary or other limitations" of the jurisdiction of the particular Court, and, therefore, as section 285 is applicable to Small Cause Courts, the Small Cause Court is inferior in grade to the Court of the First Class Subordinate Judge.

THIS was an application under the High Court's extraordinary jurisdiction against the order of Khán Bahádur M. N. Nánávati,

* Application No. 93 of 1893 under the extraordinary jurisdiction.

(1) P. J., 1893, 314; I. L. R., 18 Bom., 458.

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TURMUKLÁL
HARKISANRÁIKALYANDA'S
KHUSHÁL.

First Class Subordinate Judge of Surat, in a proceeding in execution of a decree.

One Gumna Purshottam obtained a decree in the Court of Small Causes at Surat against his debtor Máneklál Nándlál and in execution attached a certain debt due to Máneklál by the Jáffaralli Spinning and Weaving Company. After the levy of attachment an order under section 301 of the Civil Procedure Code (XIV of 1882) was duly served on the company, and a proclamation of sale having been issued on the 27th January, 1893, the debt was sold by auction and was purchased by the applicant Turmuklál Harkisanrái.

Subsequently to the above attachment and proclamation of sale by the Small Cause Court, but before the actual sale by that Court, the same debt was attached on the 8th February, 1893, in execution of a decree passed by the Court of the First Class Subordinate Judge of Surat against the said Máneklál Nándlál at the instance of one Kalyándás Khushál (the opponent). The applicant thereupon presented an application to the First Class Subordinate Judge, contending that under the circumstances mentioned above it was not competent to that Court to put up the said debt again to sale.

In answer to the above application the opponent Kalyándás Khushál replied that as the sale by the Small Cause Court had taken place pending the attachment levied by the Court of the First Class Subordinate Judge, it was null and void under section 285 of the Civil Procedure Code (XIV of 1882), and that as the applicant bought the debt with notice of the attachment, his application should be dismissed.

The applicant admitted that the sale had taken place pending the attachment by the Court of the First Class Subordinate Judge, but contended that as the attachment levied by the Small Cause Court was prior in date, the sale by that Court was valid.

The Subordinate Judge rejected the application. The applicant, therefore, presented a petition to the High Court under its extraordinary jurisdiction, and obtained a rule *nisi* calling on the opponent to show cause why the order of the Subordinate Judge should not be set aside.

1894.

TURMUKLÁL
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KHUSHAL.

Chimanlál H. Setalvad for the applicant in support of the rule :—The sale by the Small Cause Court was valid. That Court was the first to attach the debt, and was, therefore, the Court to carry out the execution. Section 285 of the Civil Procedure Code (XIV of 1882) does not apply, as the Small Cause Court is not inferior in grade to the Court of the Subordinate Judge. This is clear from clause 2 of section 2 of the Civil Procedure Code, which shows that the two Courts belong to different classes—*Muttukaruppan v. Mutturamlinga*⁽¹⁾; *Chunni Lál v. Debi Prasád*⁽²⁾; *Aghore Náth v. Sháma Sundari*⁽³⁾; *Kashy Nath Roy v. Surbanand Shaha*⁽⁴⁾; *Bykant Nath Shaha v. Rajendro Narain Rai*⁽⁵⁾; *Patel Náránji v. Haridás*⁽⁶⁾.

Motilal Mugatlal Munshi, for the opponent, showed cause :—The word “grade” has reference to the extent of jurisdiction. Compare section 285 of the present Civil Procedure Code (Act XIV of 1882) with section 5 of the former Code (Act VIII of 1859). The Court of the First Class Subordinate Judge being a Court of higher jurisdiction than the Small Cause Court, the proceedings in that Court must prevail.

SARGENT, C. J. :—We think that the term “grade” in section 285, Civil Procedure Code, has the same meaning as it has in section 5 of Act VIII of 1859,—that is to say, that it depends upon “the pecuniary or other limitations” of the jurisdiction of the particular Court, and, therefore, as section 285 is applicable to Small Cause Courts, the Small Cause Court must be held to be of inferior grade to the Court of the First Class Subordinate Judge. But, inasmuch as it appears that the Small Cause Court had issued the proclamation for sale on 27th January, 1893, before application for execution was made in the First Class Subordinate Judge’s Court on 8th February, 1893, we must hold, on the authority of *Patel Náránji v. Haridás*⁽⁶⁾, that the sale by the Small Cause Court was not rendered invalid by the subsequent proceedings in the First Class Subordinate Judge’s Court.

(1) I. L. R., 7 Mad., 47.

(4) I. L. R., 12 Calc., 317.

(2) I. L. R., 3 All., 356.

(5) *Ibid.* p. 333.

(3) I. L. R., 5 All., 615.

(6) P. J., 1893, 314; I. L. R., 18 Bom., 458.

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We must, therefore, make the rule absolute, but we think, under the circumstances, without costs, as the precise point now taken was not raised before the First Class Subordinate Judge, nor made a distinct ground in the application for the rule.

Rule made absolute.

APPELLATE CIVIL.

FULL BENCH.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Jardine and
Mr. Justice Candy.*

IN RE MARINE INSURANCE CERTIFICATE.*

1894.
January 15.

Stamp—Stamp Act (I of 1879), Sec. 3, Cl. 15—Policy of insurance or memorandum of proposed insurance—Document on the face of it not contemplating necessity of any other formal document.

A document not being a mere "slip" or memorandum of a proposed insurance, and mentioning the sum for which the assurer declares the name of the ship, the voyage and the premium, and providing for the losses being paid on its production, in conformity with certain conditions in the possession of the assurers, and, lastly, expressly guaranteeing payment of losses and claims settled under it, and which on the face of it does not contemplate the necessity of any other document of a more formal character being passed to the assured, requires to be stamped as a policy under clause 15, section 3 of the Stamp Act (I of 1879).

THIS was a reference by J. M. Campbell, Collector and Superintendent of Stamps at Bombay, under section 46 of the Indian Stamp Act (I of 1879).

The reference was made in the following terms:—

"By a certificate of insurance of the Underwriting and Agency Association, Limited, dated at Karachi 14th January, 1893, and signed by the agents of the Association * *, it is certified that insurances having been effected, the conditions of which are in the assurer's possession, the assurers declare under such insurances the sum of Rs. 800 on certain goods shipped at and from Karachi to Bombay, and note appears at the foot of the certificate.

"That on application at the head office in London the certificate may be exchanged for a stamped policy, and that losses and claims shall be payable in conformity with the conditions of the

* Civil Reference, No. 8 of 1893.