

QUEEN-
EMPRESS
v.
KUNJU
NAYAR.

victed of forgery, we must set aside the conviction under s. 465. But, as the finding is that the prisoner intended to defraud the complainant by means of the false entry, we convict him of an attempt to cheat, ss. 417 and 511 of the Penal Code, and reduce the sentence to one of six months' rigorous imprisonment.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

AITHALA (DEFENDANT No. 2), APPELLANT,

and

SUBBANNA (PETITIONER), RESPONDENT.*

Civil Procedure Code, s. 586, applies to orders in execution of decrees in Small Cause Suits.

No second appeal lies from an order passed in execution of a decree in a suit of the nature cognizable by a Small Cause Court where the subject matter of the suit does not exceed 500 Rs.

APPEAL from an order of J. W. Best, District Judge of South Canara, reversing an order of K. Krishna Rau, District Munsif of Udipi, in execution of the decree in suit No. 115 of 1876.

The facts appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Wilkinson, JJ.).

Ramachandra Rau Sahib for appellant.

Subba Rau for respondent.

JUDGMENT:—The preliminary objection is taken that no second appeal is allowed by the Code of Civil Procedure from the order made by the District Judge. It is provided by s. 586 that no second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes when the amount or value of the subject matter of the original suit does not exceed Rs. 500. It is conceded that the decree under execution directed the defendant to pay the plaintiff a sum of money less than Rs. 500, and that it contained no direction for the sale of any immovable property. It is clear, therefore, that it was a decree passed in a suit

* Appeal against Appellate Order No. 4 of 1888.

cognizable by a Court of Small Causes. It was held by the High Court in Bengal that no second appeal would lie from orders made in execution of decrees passed in suits of the nature cognizable by Courts of Small Causes—*Debee Pershad Singh v. Syud Delawar Ali*(1). Although the decision was one passed *ex parte*, yet it appears to recognize the principle that such orders are orders made in proceedings in suits of the nature of small causes and do not stand upon a higher footing than decrees made in those suits. As regards cases in which decrees of Small Cause Courts are executed against immovable property, s. 228 specially provides that orders passed in executing such decrees shall be subject to the same rules in respect of appeals as if the decrees had been passed by the courts which execute them. Though our attention was drawn to *The Collector of Bijnor v. Jafar Ali Khan*(2) and *Mahadev Narsinh v. Ragho Keshav*(3), we do not consider that they are in point. The question decided by them was that an order of remand made by the District Court was appealable to the High Court, and it proceeded on the view that the orders contemplated by s. 586 are specially provided for by s. 588. Though the District Judge appears to have considered that the decree under execution was substantially a decree passed against the estate of the joint family of which the appellant before us is a member, still the construction adopted by him cannot, in our opinion, operate to alter the real nature of the decree, and can no more give us a jurisdiction which we do not possess than an erroneous order made in an appeal preferred to him from a decree passed by a District Munsif in the exercise of his ordinary jurisdiction in a suit of the nature cognizable by a Court of Small Causes.

We are of opinion that this appeal cannot be maintained and we dismiss it with costs.

(1) 12 W.R., 86.

(2) I.L.R., 3 All., 18.

(3) I.L.R., 7 Bom., 292.