

reasonable being what has to be adopted. By way of explanation two obvious illustrations may be given. Suppose the officer was away for an hour or two or even for a whole day for recreation or other personal purposes that will clearly not reckon against the municipality and he would still be taken in point of law to have "held office within the limits" for the day. On the other hand if he had been obliged to stay outside the municipal limits in the discharge of his official duties from, as it has been proved in this case, morning till evening, his spending the night within the limits would not warrant its being held that he held office that day within the limits. Though it may be easy to suggest a case almost on the border line it is scarcely necessary to say that no practical difficulty can occur in the application of the above view to cases arising under the enactment in question.

THE
MUNICIPAL
COUNCIL OF
CUDDALORE
v.
SUBRAH-
MANIA
AYYAR.

Upon the facts found by the District Munsif his decision is right. The petition is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Moore.

SUBBAROYADU (PLAINTIFF), PETITIONER,

1906
January 4,

v.

GANGAYYA (DEFENDANT), COUNTER-PETITIONER.*

Provincial Small Cause Court Act IX of 1887, s.23-Exercise of power under section 23 gives Court jurisdiction to try suit as an original suit.

Where a question of title which a Court of Small Causes cannot finally determine is involved in a small cause suit, the Court has discretionary power under section 23 of Act IX of 1887 to return the plaint to be presented to a Court having such jurisdiction. The latter Court thereupon acquires jurisdiction to try the suit as an original suit and is bound to receive the plaint and try it as such.

Mahamaya Dasya v. Nitya Hari Das Bairagi, (I.L.R., 23 Calo., 425), followed.

* Referred Case No. 17 of 1905, stated under section 646 B of Act XIV of 1882 by C. G. Spencer, Esq., Acting District Judge of Godavari, in the matter of the plaint filed as Original Suit No. 116 of 1905 on the file of the District Munsif of Ellore.

SUBBA-
BORADU
v.
GANGAYYA

THE facts of this case are set out in the letter of reference as follows :—

“ The suit was first filed in the Ellore District Munsif's Court. It was for refund of certain purchase money from defendant who failed to deliver peaceful possession of the premises purchased. The defendant filed a statement pleading that plaintiff had no right to recover the purchase money unless he established want of title on the part of the defendant. The District Munsif holding that such suit was not excepted from the jurisdiction of a Small Cause Court, returned the plaint for presentation in the proper Court.

The Additional Sub-Judge of Rajahmundry in whose Court the plaint was then presented on the small cause side, returned the plaint under section 23 of the Provincial Small Cause Courts' Act, as not being cognisable by a Small Cause Court as a question of title had to be incidentally determined.

The plaint was again presented on the original side in the District Munsif's Court of Ellore. But the present District Munsif returned the plaint on the ground that he had no power to go behind his predecessor's order which was still in force not being overruled by an Appellate Court.

The plaintiff then moved this Court by O.P. 439/1905 to make a reference to the High Court. The suit is in my opinion excluded under clause II of second schedule of Provincial Small Cause Courts' Act as questions of title have to be incidentally determined. The District Munsif should have taken it on the original side. His predecessor apparently ignored the question of title to be determined incidentally.”

ORDER.—The object of section 23 of the Provincial Small Cause Courts' Act is to enable the Small Cause Court to decline to exercise its jurisdiction in a small cause suit, when the right of the plaintiff and the relief claimed by him depend upon the proof or disproof of a title to immoveable property or other title which the Small Cause Court cannot finally determine, and to return the plaint to be presented to a Court having jurisdiction to determine the title. The exercise of the power is discretionary with the Small Cause Court, and when it is exercised the effect is to give the Court's jurisdiction to try the small cause suit as an original suit notwithstanding anything in section 16 of the Act

[*Mahamaya Dasya v. Nitya Hari Das Bairagi* (1)]. The District Munsif must therefore receive the plaint and deal with it according to law.

SUBBA-
ROYADU
v.
GANGA YYA.

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Moore.

RUNGA AYYAR

v.

EMPEROR.*

1906
November 10.

Criminal Procedure Code—Act V of 1898, s. 476—Power to direct proceedings conferred on Court and not on Magistrate trying—Dismissal of complaint without adjudication no bar to proceedings under.

The power to direct a prosecution under section 476 of the Code of Criminal Procedure is conferred on the Court and not on the individual Magistrate who tried the case. Such power is not ousted by the dismissal, without adjudication, of a complaint by the party in respect of the same offence under a sanction previously given by the Court.

THE petitioner was a witness for the prosecution in Criminal Case No. 81 of 1903 on the file of the First-class Magistrate of the Calicut Division. The case was tried by the Deputy Magistrate then in charge, who discharged the accused and granted sanction for the prosecution of the petitioner and others for perjury. The accused who obtained the order granting sanction presented an unstamped complaint which was dismissed.

The Head Assistant Magistrate, who succeeded in charge of the Division, directed the prosecution of the petitioner and others under section 476 of the Code of Criminal Procedure.

(1) I.L.R., 23 Calc., 425.

* Criminal Revision Case No. 372 of 1905, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the proceedings of F. Noyce, Esq., Assistant First-class Magistrate in charge of Calicut Division, in the matter of Miscellaneous Case No. 4 of 1904 according sanction for the prosecution of the petitioner in Criminal Case No. 81 of 1903 on the file of his Court.