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and had found fault with him for his conduct generally. I have considered this matter very carefully and I have come to the conclusion that the proper measure of punishment is that he be rigorously imprisoned for a term of two years and six months. I think it right to add that I see no reason to doubt the truth of of Mr. Caleb's statement in the main. In one or two matters there may be discrepancies, but they are only slight. It does not seem to me that there is the slightest foundation for the suggestion that he had lent himself to a false case for the purpose of punishing the appellant.

REVISIONAL CIVIL.

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August 1.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Tyrrell.

CHEDA LAL (PLAINTIFF) *v.* MULCHAND (DEFENDANT).
MINDAL (JUDGMENT-DEBTOR) *v.* KUNDAN SINGH (DECREE-HOLDER). *

Attachment—Small Cause Court—Standing crops—Immovable property—Act I of 1868 (*General Clauses Act*)—*Civil Procedure Code—Act IX of* 1887 (*Small Cause Courts Act*) *sch. ii, cl.* (6).

Standing crops are immovable property in the sense of the General Clauses Act (I of 1868), and of cl. (6) of the second schedule of the Small Cause Courts Act (Act IX of 1887), and of the Civil Procedure Code. *Madayya* v. *Venkata* approved (1).

This was a reference under s. 617 of the Code of Civil Procedure made by the Munsif of Bareilly, sitting as a Small Cause Court Judge, in the following terms:—

Suit No. 79 of 1891.	Miscellaneous No. 160 of 1891.
CHEDA LAL.—Plaintiff,	MINDAI—Judgment-debtor,
versus	*versus*
MULCHAND.—Defendant.	KUNDAN SINGH—Decree-holder.

"These are two cases of different nature, but the points at issue, on which I entertain some doubt, are common to both. They have therefore been taken up together for the purposes of this reference, which I beg leave to make to the Honorable the High Court under the provisions of s. 617 of Act XIV of 1882.

* Reference under s. 617 of the Civil Procedure Code.

(1) I. L. R. 11 Mad., 193.

"The suit No. 79 is for the recovery of Rs. 36-2-6 due under a bond by enforcement of lien on the hypothecated sugarcane crops, which are still standing in the fields. The defence, *inter alia*, is that the standing crops are immovable property and that a Court of Small Causes is not competent to try a suit for enforcement of lien in respect of the same.

"The miscellaneous case No. 160 contains an objection on behalf of a judgment-debtor as to the propriety of attachment and sale of certain standing crops, such as wheat, barley, &c., which were effected under the provisions of s. 269 of Act XIV of 1882 in the execution of a decree by order of this Court, on the Small Cause Court Side. The judgment-debtor urges that the procedure laid down in ss. 274, 287 and 289 *ibid* should have been followed, as the growing crops are immovable property, and that the Small Cause Court had no jurisdiction to proceed against the same under s. 269. The points for determination are :—

1. Whether the standing crops are movable or immovable property for the purposes of the Small Cause Court and the Code of Civil Procedure?

2. Can such a Court pass a decree for enforcement of lien against them?

3. Can it make a valid attachment and sale of the same in execution of its decree?

"A reference was formerly made by the Small Cause Court Judge of Agra asking for the opinion of the High Court as to whether trees and growing crops could be attached and sold in execution of a decree as movable property by a Small Cause Court. The Honorable Court therefore gave a decision as regards the trees, but expressed no opinion in respect of the standing crops. See *Umed Ram* v. *Daulat Ram* (1). It was there held that trees were immovable property within the definition given in cl. (5) of s. 2 of Act I of 1868, and, as such, were not liable to sale or attachment by a Court of Small Causes under Act XI of 1865, notwithstanding that

(1) I. L. R. 5 All., 564.

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they were classed as movable property in the later Acts III of 1877 and IV of 1882.

"A somewhat similar question relating to the standing sugarcane crops was again raised in the Honorable Court in *Kalka Prasad* v. *Chandan Singh* (1), but the points there discussed and decided were not exactly like those involved in the present cases. It appears to have been ruled there (see pp. 21-23) that, although the standing crops were movable property not only under Act III of 1877 and IV of 1882, but also under cl. (6) of s. 2 of Act I of 1868, yet a suit for enforcement of lien against such crops was not cognizable by a Court of Small Causes under Act XI of 1865 with reference to a previous ruling *in re Surajpal Singh* v. *Jairam Gir* (2), which laid down that such Court was incompetent to entertain any suit for enforcement of lien against any movable property whatever.

"The Act XI of 1865 has since been repealed. Under art (6) of sch. ii of Act IX of 1887 the jurisdiction of the Small Cause Court is excluded from trying suits for enforcement of lien as regards immovable property only. Such Court now appears to be competent to dispose of suits for enforcement of lien against movable property. The precedent *in re Surajpal* v. *Jairamgir*, which was based upon the repealed Act does not appear to be in force any longer. The effect of the ruling *in re Kalka Prasad* v. *Chandan Singh* would therefore be that a Court of Small Causes under Act IX of 1887 can try suits for enforcement of lien against standing crops and can attach the same in execution of its decree, treating them as movable property.

"In my humble opinion the case of a tree is distinguishable from that of standing crops. A tree is generally planted with the intention of being kept and preserved for ever, though it may be cut off and removed at pleasure. The case of a tree resembles in all respects that of a house which may likewise be demolished at one's will. Both are equally permanently fastened to the earth and therefore fall equally within the definition of immovable property under clause (5) of s. 2 of Act I of 1868. Standing crops are

(1) I. L. R. 10 All., 20. (2) I. L. R. 7 All., 855.

never cultivated with the intention of being kept permanently, but they are intended from the very beginning to be reaped after a few months. Their case, and particularly grain crops when they are in ear, resembles that of fruit on trees, and, as such, they are movable property. It has been ruled that fruits, even when they are attached to trees which are permanently fastened to the earth are movable property and suits relating to them are cognizable in a Small Cause Court [*Nasir Khan* v. *Karamat Khan* (1)]. It is true that by a wide interpretation of clauses 5 and 6 of s. 2 of Act I of 1868 everything attached to the earth, whether permanently or temporarily, is immovable property, so long as it is not severed from the earth, but, by a qualified and reasonable construction of these clauses with reference to the natural and ordinary course of affairs, the things which are really movable shall not be classed with the immovable property simply because they are partially attached to the earth. If the definition given in clause 5 be strictly construed, every movable thing, such as utensils, furniture, clothes, &c., would become immovable property, if a portion of the same is sunk under the ground. In that case nothing will ever be attachable in execution of a Small Cause Court decree, as the judgment-debtors, after being aware of this interpretation, would make everything of their household as immovable property as soon as they receive intimation of the issue of writ of attachment. I would therefore find the issues under reference against the defendant and the judgment-debtor.

"There is, however, a recent ruling of the Madras High Court in their favor [*Madayya* v. *Yenkata* (2)]. There the issues now raised were directly discussed and decided after referring to the Allahabad cases *in re Nasir Khan* v. *Karamat Khan* (1) and *Umed Ram* v. *Daulat Ram* (3) above alluded to, and after considering two other cases *Pandah Gazi* v. *Jennuddi* (5) and *Sadu* v. *Sambhu* (4) but without any reference to the ruling *in re Kalka Prasad* v. *Chandan Singh* (5) which apparently enunciates a conflicting view.

(1) I. L. R. 3 All., 168. (3) I. L. R. 5 All., 564.
(2) I. L. R. 11 Mad., 193. (4) I. L. R. 4 Calc., 665.
(5) I. L. R. 6 Bom., 592.

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As the matter is of some importance and daily occurrence, I consider it desirable to solicit a clear decision of our own High Court thereon for my present and future guidance.

"It will not be out of place perhaps to mention that according to the practice that prevails in this Court from several years past, standing crops are invariably treated as movable property for the purposes of attachment and sale. I believe such is the practice in many other Courts of these Provinces. In regarding them as immovable property both parties will often be put to great inconvenience and loss in their attachment and sale, as was pointed out in detail by the referring officer in the Madras case. In many instances all steps taken under ss. 274, 287 and 289 of Act XIV of 1882, all delays occurring between the dates of attachment and sale and all expenses incurred for an inquiry under the High Court's Circular Order No. 4 of 1881, for the issue of sale proclamations, and for the care and custody of the crops since attachment will become useless when they are ripe enough and reaped long after the attachment, but a few days before the date fixed for sale; because after they have been severed from the ground they will have to be sold as movable property. It will be a mere technical procedure and also an anomaly to treat the crops as immovable property so long as they are standing in the fields and afterwards as movable property in the course of the same execution proceeding."

The reference came before Edge, C. J., and Tyrrell, J., who gave the following opinion thereon:—

EDGE, C. J., and TYRRELL, J.—Our answer to this reference is that we agree with the opinion expressed by the High Court at Madras in *Madayya* v. *Yenkata* (1), and we hold that standing crops are immovable property in the sense of the General Clauses Act (I of 1868) and of clause (6) of the second schedule of Act IX of 1887 and of the Code of Civil Procedure.

Return the papers.

(1) I. L. R. 11 Mad., 193.