

Section 6 clearly does not apply to the present case. So far as the sentence is concerned, there can be very little doubt that the applicant as well as everybody else concerned knew that the *ghi* was adulterated. The Act was passed for the public welfare and it is only by a thorough working of it that the public will benefit from it. These persons who sell *ghi* are generally well aware of the fact that it is adulterated. I therefore see no reason to interfere with the sentence. The application is accordingly dismissed.

*Application dismissed.*

---

## REVISIONAL CIVIL.

---

*Before Mr. Justice Abdul Raof.*

BALDEO (DEFENDANT) v. PANNA LAL (PLAINTIFF).\*

Act No. IX of 1887 (Provincial Small Cause Courts Act), schedule II, article 13—Small Cause Court—Jurisdiction—Suit by zamindar to recover a *haqq, cess or due* from tenant.

*Held* that a suit by a zamindar to recover from one of his tenants dues payable in kind under the provisions of the village *wajib-ul-arz* was excluded from the jurisdiction of a Court of Small Causes by article (13) of the second schedule to the Provincial Small Cause Courts Act, 1887.

THE plaintiff in this case sued as zamindar of the village of Maholi Shamsheganj, pargana Bhogaon in the district of Mainpuri, to recover from the defendant, who was a Teli living in the village, the price of a certain quantity of oil, which, the plaintiff asserted, the defendant was bound to deliver to him at the rate of two chataks daily according to a custom recorded in the village *wajib-ul-arz*.

The suit was instituted in a Court of Small Causes, and was decreed *ex parte*. The defendant came in revision to the High Court, upon the ground that in view of article (13) of the second schedule to the Small Cause Courts Act, 1887, the suit was not cognizable by a Court of Small Causes.

Munshi *Baleshwari Prasad*, for the applicant.

Munshi *Girdhari Lal Agarwala*, for the opposite party.

ABDUL RAOOF, J.:—Bohra Panna Lal the plaintiff in this case brought this suit against Baldeo, Teli, upon the following

1918

EMPEROR  
v.  
KEDAR  
NATH.

1918

June, 14.

1918

BAUDEO  
v.  
PANNA LAL.

allegations:—In paragraph 1 of the plaint he stated that the plaintiff was a zamindar, co-sharer, and also a lambardar in mauza Maholi, Shamsherganj, tahsil Bhogaon, district Mainpuri. In paragraph 2 of the plaint he stated that in accordance with the condition and custom entered in the wajib-ul-arz, the defendant was liable to give and deliver to the plaintiff two chataks of oil daily, that is to say,  $3\frac{1}{4}$  seers every month. In paragraph 3 he stated that the defendant had not complied with the condition in the wajib-ul-arz for the period therein stated and he therefore claimed Rs. 49-8-0 as the price of the oil which had not been delivered to him by the defendant. The suit was filed on the 6th of August, 1917. In support of his claim the plaintiff filed a copy of an extract from the wajib-ul-arz in which the custom relied upon was entered. The wajib-ul-arz is dated the 10th of September, 1872, and its chapter IV, clause 6, is described in these words:—“*Fasil chaharam, daja shasham. Raqum jo malikan ko sakinae ghair mazare' se leni jayiz hai.* Below this the entry is made in these words:—“*Teliyan se tel muafiq jalane rozmarra chaupal aur dewali men ba wazan ek ser.*” The suit was brought on the basis of this entry in the wajib-ul-arz and it was decreed *ex parte*. The present application for revision has been filed against the decree and judgment of the court below. The ground taken before me is that the suit was not cognizable by a Court of Small Causes, and reliance is placed upon article (13) of schedule II attached to the Provincial Small Cause Court Act. The article runs thus:—“A suit to enforce payment of the allowance or fees respectively called *malikana* and *haqq* or of cesses or *other dues* when the cesses or dues are payable to a person by reason of his interest in immovable property or in an hereditary office or in a shrine or other religious institution.” The present suit is certainly for dues which are claimed by the plaintiff as payable to him by reason of his interest in immovable property. The plea taken in revision is a valid plea and I think it was clearly contemplated to exclude such a suit from the cognizance of a Court of Small Causes. I hold that the court below had no jurisdiction to entertain this suit. I allow the application, set aside the judgment and decree passed by the court below and under order VII, rule 10, of the Code of Civil Procedure, I direct that the plaint be

returned to the plaintiff to be presented to the court in which the suit should have been instituted. The applicant will be entitled to his costs, and I order accordingly.

*Application allowed.*

1918

BALDEO  
v.  
PANNA LAL,

## APPELLATE CIVIL.

*Before Justice Sir Pramada Charan Banerji and Mr. Justice Piggott.*

LACHMI NARAIN DUBE (APPLICANT). v. KISHAN LAL AND ANOTHER  
OPPOSITE PARTIES). \*

1918  
June, 26.

*Act No. III of 1907 (Provincial Insolvency Act), sections 6, 15, 16—Insolvency—Petitioner examined and evidence taken—Case adjourned—Petitioner absent on adjourned date—Petition dismissed for want of prosecution.*

When a petition for a declaration of insolvency has once been presented conformably to the requirements of Act No. III of 1907, the Court is bound, after completing the necessary inquiries, to come to a decision in respect of the various matters spoken of in section 15 of the Act and either to dismiss the petition under the provisions of that section, or to make an order of adjudication. But it cannot dismiss the petition merely because, on an adjourned date, the petitioner does not appear.

ONE Lachmi Narain Dube applied, under the provisions of Act No. III of 1907, to the Subordinate Judge of Mirzapur to be adjudicated an insolvent. The application was opposed by a creditor. The court examined the applicant and took certain evidence offered by the opposing creditor. The hearing was then adjourned, and continued, for various reasons, to be adjourned over a number of successive dates. Finally, on the 31st October, 1917, the case being called on, the applicant was found to be absent. The court there upon passed the following order:—  
“Applicant is absent. The application is dismissed for want of prosecution.” The applicant appealed to the High Court against this order.

Munshi *Harnandan Prasad*, for the appellant.

The respondents were not represented.

BANERJI and PIGGOTT, JJ. :—This is an appeal by one Lachmi Narain Dube, who had applied to the court of the Subordinate Judge exercising jurisdiction in the district of Mirzapur to be adjudicated an insolvent. The application was opposed by a

\* First Appeal No. 13 of 1918, from an order of I. B. Mundle, Subordinate Judge of Mirzapur, dated the 31st of October, 1917.