

1883
 RAGHUBAR
 DAYAL
 v.
 LACHEMIN
 SHANKAR.

payment of the bond. The bond fell due on the 12th May, 1873. The suit was instituted on the 10th March, 1882. The Court of first instance gave the plaintiff a decree for Rs. 692-13, to be enforced against the person of the defendant Raghubar Dayal as well as by enforcement of hypothecation against a part of the property set out in the bond. On appeal by the defendant Raghubar Dayal the District Court affirmed this decree. On second appeal by the defendant Raghubar Dayal, it was contended on his behalf that, so far as his person was concerned, the claim was barred by the period of six years provided for by No. 116, sch. ii of the Limitation Act, and that consequently so much of the decree as affected his person was bad in law.

Munshi *Ram Prasad* and Babu *Ram Das Chakarbaty*, for the appellants.

The respondent did not appear.

The Court (STRAIGHT and BRODHURST, JJ.) delivered the following judgment:—

STRAIGHT, J.—Although the Bombay Court have expressed a different view (I. L. R., 6 Bom. 719), the current of decisions in this Court, one of which is now in appeal before the Privy Council, has favoured the view enunciated in the first plea. We think it enough to say, that we are not prepared at this moment to depart from those decisions. The appeal must be decreed with costs, and the decree of the plaintiff will be amended by striking out so much of it as relates to the person of the defendant Raghubar Dayal.

Appeal allowed.

CIVIL REVISIONAL.

1883
 April 23.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

ILAH I BAKHSH (DEFENDANT) v. SITA AND ANOTHER (PLAINTIFFS).*

Attachment of moveable property—Suit to establish right—Small Cause Court suit—Civil Procedure Code, s. 283.

A suit under s. 283 of the Civil Procedure Code by a party against whom an order under s. 281 has been passed to establish his right to moveable

* Application No. 312 of 1882, for revision under s. 622 of Civil Procedure Code of an decree of J. R. Shiroore, Esq., Judge of the Court of Small Causes at Agra, dated the 24th April, 1882.

attached in execution of a decree passed by a Civil Court, and for such property, the same being less than Rs. 500 in value, is not a suit cognizable in a Court of Small Causes.

THE plaintiffs in this suit claimed certain moveable property, or Rs. 80 its value, on the ground that it belonged to them; that the defendant had caused it to be attached in execution of a decree as the property of his judgment-debtor; and that an objection which they had preferred to the Court executing the decree to the attachment of the property had been disallowed. The suit was instituted in a Court of Small Causes, which gave the plaintiffs a decree.

The defendant applied to the High Court for revision on the ground that the suit was not cognizable in a Court of Small Causes.

Munshi *Hanuman Prasad* and *Mir Zahur Husain*, for the defendant.

Munshi *Kashi Prasad*, for the plaintiffs.

The Court (OLDFIELD and BRODHURST, JJ.) delivered the following judgment:—

OLDFIELD, J.—This is a suit brought with reference to the provisions of s. 283, Civil Procedure Code, to have a right declared to property under attachment by a Civil Court, and for its recovery by removal of attachment. It is not in our opinion a suit cognizable by a Court of Small Causes. We set aside the proceedings and direct the plaint to be returned to be presented in a proper Court. The petitioner will have his costs in all Courts.

Application allowed.

APPELLATE CIVIL.

1883
January 23.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Tyrrell.

SURJU PRASAD (DEFENDANT) *v.* MANSUR ALI KHAN (PLAINTIFF).*

Mortgage—Redemption—Interest—Construction of deed.

In Chait 1275 fasli (March 1868) *M*, having borrowed Rs. 11,200 from *S*, gave him a mortgage by way of conditional sale of certain immoveable property for a term of seven years, that is to say, extending over the years

* First Appeal No. 68 of 1881, from a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 9th April, 1881.