

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, *Knt.*, Chief Justice, and Mr. Justice Kemball.

1878.
July 2.

LALLU GANESH (APPLICANT) v. RANCHHOD KAHANDA'S (OPPONENT).*

The Code of Civil Procedure (Act X. of 1877), Section 5; Chapter XX, (Section 344 to Section 360), and Schedule II.—Jurisdiction—Small Cause Court—Insolvency.

The effect of section 5 of the Code of Civil Procedure (Act X. of 1877), coupled with the second schedule to that Act, is to render the whole of chapter XX (relating to insolvent debtors) of the Code, including section 360, inapplicable to Courts of Small Causes in the Mofussal, notwithstanding the words "any Court other than a District Court" and "any Court situate in his district" which occur in that section. Consequently, the Government Resolution No. 2133, of the 3rd of April 1878, investing the Judge of the Court of Small Causes at Ahmedabad with powers, under the said chapter, to adjudicate in insolvency matters, is *ultra vires*, and invalid.

THIS was a reference, under section 617 of the Code of Civil Procedure (Act X. of 1877), from C. M. Cursetjee, Judge of the Court of Small Causes at Ahmedabad. In submitting it the Judge made the following remarks :—

"Defendant (in suit No. 2762 of 1875) was arrested under a decree against him in the said suit, but was set at large under the provisions of section 336 of Act X. of 1877, on his expressing his intention of getting himself declared an insolvent. He seems to have made the proper application to the District Court under chapter XX of the Act. The District Court has, however, under recent resolution of the Bombay Government, No. 2133,† passed on 3rd April 1878, and published at page 257, *Government Gazette*, transferred the said application to this Court for investigation * * *

"Now the question for the opinion of the honourable the High Court is, has this Court jurisdiction to entertain the application? I am of opinion that a Court of Small Causes in the Mofussal has no jurisdiction.

* Small Cause Court Reference No. 4 of 1878.

† "The Honourable the Governor in Council is pleased, under section 360 of the Code of Civil Procedure, to invest the Judge of the Court of Small Causes at Ahmedabad with the powers conferred on a District Court by sections 344 to 359 (both inclusive) of the said Code."

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“The New Civil Procedure Code does not entirely apply to Mofussal Courts of Small Causes. By section 5, certain chapters, or parts of certain chapters, only are made applicable, and it is expressly declared that ‘the other chapters and sections of this Code do not extend to such Courts.’ Schedule II, annexed to the said Code, contains the particular portions of the Code extended to this and other Courts; and it excludes, among other chapters and sections, the whole of chapter XX.

“From this it will be seen that it has been the deliberate intention of the Legislature not to apply chapter XX, providing for insolvent judgment-debtors, to these Small Cause Courts. Accordingly, I submit that the Government Resolution, above quoted, is *ultra vires*, and can give this Court no power which the Legislature has expressly withheld from it.”

None of the parties appeared.

WESTROPP, C.J.:—The Court is clearly of opinion that the effect of section 5 of the Civil Procedure Code (Act X. of 1877), coupled with the second schedule to that Act, is to render the whole of chapter XX of the Code, including section 360, inapplicable to Courts of Small Causes, notwithstanding the words “any Court other than a District Court” and “any Court situate in his district” which occur in that section. The consequence of this construction of the Code is, that Government resolution No. 2133, of the 3rd April 1878, at page 257 of Part I. of the *Bombay Government Gazette* of 1878, must be regarded as *ultra vires*, and invalid.

Order accordingly.

In consequence of the above decision, the Bombay Government cancelled the resolution above referred to (No. 2133 of 1878) and a similar resolution relating to another Court of Small Causes in the Mofussal.