

1878.

NURSENGDA'S  
RUGHUNA'TH-  
DA'S  
".  
TULSIRA'M  
BIN  
DOULATRA'M.

"This will, no doubt, be hard on the plaintiff; for, if the bonds be not sold before the expiration of six months, they may be barred, and nobody would purchase them, and the plaintiff may be deprived of the amount which may now be realized by the sale thereof. This difficulty would not have arisen under the old Civil Procedure Code, for this Court had power to appoint a receiver, who could sue for and recover the debt due on attached documents; but chapter XXXVI of the new Code, which provides for the appointment of receivers, is not made applicable to a Small Cause Court."

No pleader or counsel appeared on either side.

PER CURIAM :—Under the provisions of section 268, the bonds cannot be sold till the end of six months from the date of attachment.

It follows that, as a Court of Small Causes cannot appoint a receiver, any bonds on which recovery will be time-barred before the date on which a sale can legally be made, cannot be made available for satisfaction of the judgment-creditor's debt.

The Code in this respect appears to require amendment.

### [APPELLATE CIVIL.]

*Before Mr. Justice Melvill and Mr. Justice Kemball.*

March 26.

CHUNILAL SOBHARARAM (PLAINTIFF) v. PURBHUNDA'S KURSANDA'S  
(DEFENDANT).\*

*Code of Civil Procedure (Act X. of 1877), Sections 223 and 648—Arrest—  
Courts of Small Causes.*

Section 223 of the Code of Civil Procedure (Act X. of 1877) does not apply to Courts of Small Causes.

Section 648 of the same Act does not apply to a case in which the defendant resides within the same district in which the Court issuing a warrant is situate.

A Court of Small Causes may issue a warrant for the arrest of a person residing in another district, but not if he resides within the same district in which the Court is situate, but outside its local jurisdiction.

This case was referred for the opinion of the High Court by Cursetji Manekji, Judge of the Court of Small Causes at Ahmedabad.

The plaintiff Chunilal had obtained a decree against the defendant, and applied for the arrest of the defendant in execution thereof. In submitting the case the Judge made the following remarks :—

\* Small Cause Court Reference No. 2 of 1878.

“The place at which the said judgment-debtor resides is *outside* the jurisdiction of this Court, but *within the district* in which this Court is situated. Section 648 of the Civil Procedure Code (X. of 1877), strictly construed, applies only to the arrests of persons outside the *district* in which the Court issuing the warrant is situate. There appears to be no other provision whereby a Court can arrest a person outside its local limits but within the *same district*. The last paragraph of section 223 (Act X. of 1877) is general; but, I submit, it is controlled and narrowed by section 648, and, moreover, it is not applicable to Courts of Small Causes. The result is a strange anomaly; for, whilst, under the said section 648, this Court could get a person arrested *outside* the district in which it is situated, yet it could not do so within the same.

1878.

CHUNILA'D  
SOBHA'RA'M  
v.  
PURBHUDA'S  
KURSANDA S.

“No such difficulty arose under the old Act (VIII. of 1859), and no such difficulty would have arisen now, had section 648 of the new Act contained the words ‘jurisdiction of’ or ‘local limits of’ instead of the words ‘district within which’.

“The question, then, for the consideration and opinion of the High Court is,—can the application, mentioned in paragraph 2 of this letter, be granted; or, in other words, can this Court execute, or get executed, a warrant of arrest on a person residing outside its local limits, but within the district in which this Court is situated?

“However anomalous it may be, I am humbly of opinion that, on a strict construction of section 648, the above question must be answered in the negative.”

No pleader or counsel appeared on either side.

PER CURIAM:—It is clear that section 648 does not apply to a case in which the defendant resides within the same district in which the Court issuing a warrant is situate.

Section 223 does not apply to Courts of Small Causes.

It follows that a Court of Small Causes may issue a warrant for the arrest of a person residing in another district, but not if he resides within the same district in which the Court is situate, but outside its local jurisdiction. This is an anomaly which appears to require the attention of the Legislature.