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It seems that brides are scarce in the caste. It does not appear that Báni has any liking for Jivandás. Hirálál should find for Báni a husband within British territory and under this Court's jurisdiction. He may be allowed six months for this purpose, and the opponents Shridhar and Goverdhan are to afford every facility for the marriage of Báni to the person proposed and approved by the District Judge. Failing such an arrangement, the local *panchâit* of the caste may, as proposed by Shridhar and Goverdhan, be asked to name a bridegroom to whom Báni may be married when he is approved by the Judge. The Judge will, of course, see that Báni is not in either case forced into a marriage that would be odious to her.

The parties severally to bear their own costs in this Court.

* *Order reversed.*

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887. *October* 4.

PITÁMBER VAJIRSHET, (ORIGINAL DEFENDANT), APPLICANT, *v.* DHONDU NAVLA'PA', (ORIGINAL PLAINTIFF), OPPONENT.*

Jurisdiction—Appeal—Suit cognizable by a Court of Small Causes—Act XI of 1865, Secs. 2, 6, 12, 21—*Act XIV of* 1869, *Sec.* 28—*Subordinate Judge invested with small cause powers—Final decision.*

The plaintiff sued to recover Rs. 5 as damages for the wrongful removal of a tree. The suit was filed in the Court of a Second Class Subordinate Judge, who was invested, under Act XIV of 1869, sec 28, with the jurisdiction of a Judge of a Court of Small Causes.

The case, which was in itself of the nature of a small cause, was, however, tried as an ordinary suit according to the rules of the Civil Procedure Code. The Subordinate Judge rejected the plaintiff's claim. An appeal was made to the District Court, which reversed the Subordinate Judge's decree, and awarded the claim.

Held, that the suit having really been a small cause, no appeal lay to the District Court, though the Subordinate Judge did not use the procedu e of Act XI of 1865. Having the Small Cause Court jurisdiction, the Subordinate Judge must be taken to have dealt with the case under that jurisdiction, even if he was not quite alive to it at the time.

A suit taken cognizance of under sections 2, 6 or 12 of the Mofussil Small Cause Court Act (XI of 1865), does not cease to be a suit tried under the Act, because of

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some divergence from its summary procedure. A surplusage of form and elaborateness does not change the character of the decision for the purpose of its finality.

Section 28 of the Bombay Civil Courts' Act (XIV of 1869) does not, when jurisdiction is given under it, necessarily divide the Court into two separate Courts; but still it creates an additional and distinct jurisdiction.

Since Act IX of 1887 came into force, the Court is to be regarded as two Courts in such cases.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The plaintiff sued to recover Rs. 5 as damages for the defendant's wrongful act in cutting and removing a tree from his land.

The suit was filed in the Court of the Second Class Subordinate Judge at Mahád, who was invested with the jurisdiction of the Judge of a Court of Small Causes under section 28 of Act XIV of 1869.

The Subordinate Judge dealt with the case as an ordinary suit according to the rules of the Code of Civil Procedure. He found that the tree did not belong to the plaintiff, and rejected his claim.

The plaintiff appealed to the District Judge, who reversed the decision of the Subordinate Judge, and awarded the plaintiff's claim.

Thereupon the defendant applied to the High Court, under its extraordinary jurisdiction, for a reversal of the Appellate Court's decree, on the ground that the suit being one cognizable by a Court of Small Causes, the decision of the Subordinate Judge was final, and that, therefore, no appeal lay to the District Court.

A rule *nisi* was issued, calling upon the plaintiff to show cause why the decree of the District Court should not be set aside as *ultra vires*.

Shámráv Vithal, for the plaintiff, showed cause:—The suit was not tried as a small cause. The Subordinate Judge did not exercise the jurisdiction vested in him under section 28 of Act XIV of 1869. He tried the case according to the rules of the Civil Procedure Code. Section 21 of Act XI of 1865 does not, therefore, apply. The decision is final only when the case is

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tried under the procedure laid down in Act XI of 1865. Refers to *Dámodhar Timáji* v. *Trimbak Sakhárám*(1); *Malhári* v. *Narso Krishna*(2).

The latter case shows that a Subordinate Judge invested with small cause powers under section 28 of Act XIV of 1869 is not to be regarded as a Judge of two Courts, though he exercises a double jurisdiction. He remains Judge of a subordinate Court, and, therefore, his decision in a case tried by him as an ordinary suit is appealable. The defendant did not object to the jurisdiction of the District Court at the hearing of the appeal. It is now too late to challenge the District Court's jurisdiction. And this Court as a Court of Revision is not competent to entertain the objection. Refers to section 11 of Act VII of 1887.

Nárâyan Ganesh Chandávarkar, for the defendant, was not called on.

WEST, J.:—In this case the plaintiff sued for damages for the wrongful removal of a tree. The Court of first instance rejected his claim, which was in itself of the nature of a small cause, but which the Subordinate Judge, though invested with the jurisdiction of a Judge of a Small Cause Court, tried according to the rules of the Code of Civil Procedure. An appeal was made to the District Court, which reversed the Subordinate Judge's decree and awarded the sum claimed, Rs. 5, with costs.

To the objection now raised, that no appeal lay to the District Court, it is answered that as the Subordinate Judge did not use the procedure of Act XI of 1865 in trying the case, he must be held to have tried it under his ordinary jurisdiction. Hence it is urged it was not a case to which section 21 of the Act or indeed any section of it applied, and, therefore, under section 540 of the Code of Civil Procedure, the appeal was properly admitted. But though section 28 of Act XIV of 1869 does not, when jurisdiction is given under it, necessarily divide the Court into two separate Courts, it still creates an additional and distinct jurisdiction. (Under the recent Act IX of 1887, sec. 33, the Court is to be regarded as two Courts in such cases.) The

(1) I. L. R., 10 Bom., 370. (2) I. L. R., 9 Bom., 174.

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Small Cause Court jurisdiction is in its nature exclusive. This appears from section 2 of Act XI of 1865, from section 6 of the same Act, which enumerates the suits cognizable by a Small Cause Court, and from section 12, which says no suit of these kinds shall be tried by any other Court where a Small Cause Court exists. When section 21 says that "in suits tried under this Act, all decisions and orders shall be final," it means suits tried under this Act according to the jurisdiction created by sections 2 and 6. A suit taken cognizance of under these sections does not cease to be a suit tried under the Act, because of some divergence from its summary procedure. A surplusage of form and elaborateness does not change the character of the decision for the purpose of its finality.

The suit was filed in a Court having a double jurisdiction. But the jurisdiction under which cognizance could be taken of the claim was one and one only, not a double or an alternative jurisdiction. Having the Small Cause Court jurisdiction the Subordinate Judge must have dealt with this case under that jurisdiction, even if he was not quite alive to it at the time—*Dr. Groenvelt* v. *Dr. Burwell*[1]. We must ascribe his acts to an actual existing authority under which they would have validity rather than to one under which they would be void. A similar principle applies to the District Court, and if we could find that there was authority in that Court to receive an appeal in this case, a mere error in the subsidiary proceedings would not cancel that jurisdiction But the suit having really been a small cause, no appeal lay; there was an absolute want of jurisdiction in the District Court, and the Act VII of 1887, on section 11 of which Mr. Shámráv relied, not having come into operation when the appeal was tried, we must reverse the decree of the District Court, and restore that of the Court of first instance.

The parties severally are to bear their own costs here and in the District Court.

Decree reversed.

(1) 1 Ld. Raym., p. 454.