1894.

IN RE GULA'BDA'S BHA'IDA'S.

There was no appearance for the complainant.

PER CURIAM :—We concur with the Sessions Judge in holding that neither the evidence nor the findings justify a conviction under section 54 of Bombay Act VI of 1873. The Magistrate was satisfied that the water complained of was foul. But there is no finding on evidence that it was "offensive," and the Courts may not enlarge the meaning of that word so as to include mere waste or dirty water. As regards the definition of "street" in Bombay Act II of 1884, we think the Magistrate should have considered the judgment in *Kálidás* v. *The Municipality of Dhandhuka*[1], interpreting the older definition.

The Court annuls the conviction and sentence.

(1) I. L. R., 6 Bom., 686.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1894. *November* 26.

RANCHOD MORA'R (ORIGINAL PLAINTIFF), APPELLANT, *v.* BEZANJI EDULJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), Secs. 409, 413—Application for leave to sue in formâ pauperis—Refusal of such application a bar to subsequent application in the same right—Jurisdiction—Plea of jurisdiction.

The plaintiff applied for leave to sue as a pauper for the redemption of a mortgage. As he did not proceed with the application, it was rejected with costs on 29th November, 1888.

On the 4th February, 1890, plaintiff again applied for leave to sue as a pauper for the redemption of the same mortgage. There being no opposition, the application was granted, and was registered as a suit.

On the 20th September, 1893, when the suit had been heard nearly to the end, the Government Pleader intervened, and applied that it should not be allowed to proceed further until the plaintiff had paid the costs incurred by Government in opposing the first application, which had been rejected. But the plaintiff refused to do so, and thereupon the Subordinate Judge dismissed the suit with costs under section 413 of the Code of Civil Procedure (Act XIV of 1882), and ordered the plaintiff to pay the court-fees under section 412.

Held, on appeal, (1) that the order rejecting plaintiff's first application was an order under section 409 of the Code of Civil Procedure; (2) that both the applic[illegible]

* Appeal No. 161 of 1893.

were made in respect of the same right to sue; (3) that the order rejecting the first application operated as a bar under section 413 of the Code to the entertainment of the second application, and (4) that such bar being one to the jurisdiction of the Court, the Subordinate Judge was not only competent but bound to take notice of it at any stage of the suit.

APPEAL from the decision of Khán Bahádur M. N. Nánávati, First Class Subordinate Judge of Surat, in Suit No. 2 of 1890.

Suit in *formâ pauperis* for redemption. In 1888 the plaintiff applied, as heir of one of the mortgagors, for leave to sue as a pauper for redemption of certain property which had been mortgaged in 1873 for Rs. 19,500 by his father and uncles.

On 29th November, 1888, this application was rejected for want of prosecution. In rejecting the application, the Subordinate Judge passed the following order:—

"Since the applicant does not wish to proceed with the application, I reject his application to be allowed to sue in *formâ pauperis* and order him to pay opponent's costs and bear his own."

On the 4th February, 1890, the plaintiff again applied for leave to sue as a pauper for redemption of the same mortgage of 1873.

The application contained the following clause:—

"All the properties in mortgage belonged to my grandfather by right of ownership. I have, therefore, as a grandson a share in my own right in the ancestral property. Therefore, under the said right, as also under my own right as one of the male survivors of a joint Hindu family, I alone have brought this suit for redeeming the mortgage."

This application, not being opposed by the defendants, was granted by the Subordinate Judge, and it was registered as Suit No. 217 of 1890 under section 410 of the Code of Civil Procedure (Act XIV of 1882).

On the 20th September, 1893, the suit being then nearly at an end, the Government Pleader applied to the Court, praying that it should not be allowed to proceed further until the plaintiff had paid the costs incurred by Government in opposing his previous application for leave to sue as a pauper.

The plaintiff having refused to do so, the Subordinate Judge dismissed the suit, holding that the order of the 29th November, 1888, rejecting the first application for leave to sue in *formâ*

1894.

RANCHOD MORA'R v. BEZANJI EDULJI.

pauperis was made under section 409 of the Code of Civil Procedure, and that, therefore, the second application was barred under section 413 of the Code.

Against this order of dismissal the plaintiff appealed to the High Court.

Kálábhai Lalubhai for appellant (plaintiff):—Section 409 of the Code of Civil Procedure clearly refers to orders passed on the merits; it contemplates an inquiry into the question of pauperism, and it is only after holding such an inquiry that the Court can make an order under that section either allowing or refusing to allow the applicant to sue as a pauper. The order rejecting our first application was not passed after inquiry into our pauperism. It was passed merely because we did not wish to proceed with the application. The order was, therefore, not passed under section 409 of the Code. The lower Court's order as to costs was illegal and *ultra vires*—*The Collector of Ratnágiri* v. *Janárdhan Fithal*(1). The Government Pleader can only intervene under the latter part of section 413 of the Code, if a regular suit is instituted in respect of the same right to sue. In the present case no such suit was filed, and the latter part of section 413 does not apply. The Government Pleader was present in Court when the second application for leave to sue in *formâ pauperis* was granted and registered as a suit. He did not then contend that the application was barred under the first part of section 413. He must, therefore, be deemed to have waived the objection. It was too late for him to raise any objection after the suit had proceeded for over three years, and was nearly ripe for judgment; and then the only objection taken was that the suit should be stayed till the court-fees were paid. He ought not to have been allowed to raise even this objection at the last stage of the suit—*Parkinson* v. *Hanbury*(2). Section 413, clause 2, does not apply to a pauper suit. As regards clause 1, it has no application to the present case, as we did not sue in respect of the same right of action. On the former occasion plaintiff sued as heir of his father, *i.e.* in a representative capacity. On the second occasion plaintiff sued in his own right as the sole surviving member of a joint family. The second application was, there-

(1) I. L. R., 6 Bom., 590. (2) 22 L. J. N. S. Ch., 979.

1894.

RANCHOD MORA'R v. BEZANJI EDULJI.

fore, not barred by the first. The Subordinate Judge was not competent *suo motu* to take the objection under section 413. He had already passed an order allowing the applicant to sue as a pauper. This order could only be set aside either on a review or on an appeal to the High Court.—Refers to *Amichand* v. *The Collector of Sholápur*(1); *The Collector of Kánara* v. *Krishnáppa*(2).

Mánekshah Jehángirshah for respondent No. 1.

Ráo Sáheb *Vásudeo J. Kirtikar*, Government Pleader, for respondent No. 9.—The order dismissing the first application for leave to sue in *formâ pauperis* could only have been made under section 409 of the Code of Civil Procedure. There is no other section under which it could be made. That being the case, section 413 applies, and the Court had no jurisdiction to entertain a subsequent application for leave to sue in *formâ pauperis* in respect of the same right of action. This objection to the jurisdiction of the Court could be raised at any stage of the suit—*Muhammad Ismail* v. *Chattar Singh*(3); *Harsarúm Singh* v. *Muhammad Raza*(4); *Abáji* v. *Rámchandra*(5). It is contended for the appellant that no such objection was taken either by the defendants or by the Government Pleader when the second application was granted and registered as a suit. But the consent or acquiescence of parties cannot confer on the Court a jurisdiction which it does not possess. Where there is an inherent incompetency in a Court to deal with the question before it, the omission to raise the question of its jurisdiction does not operate as a waiver—*Bibi Ladli Begam* v. *Bibi Raje Rabia*(6). Section 11 of the Code of Civil Procedure is conclusive on the point. It prevents a Court from entertaining any suit the cognizance of which is barred by any enactment for the time being in force. As to the question whether both the applications for leave to sue in *formâ pauperis* were made in respect of the same right to sue, it is clear that the plaintiff sought on both occasions to redeem one and the same mortgage. The fact that on the former occasion he sued as heir of his father, and that afterwards he sued in his own right as the sole surviving member of his family, does not alter the cause of action.

(1) I. L. R., 13 Bom., 234.
(2) I. L. R., 15 Bom., 77.
(3) I. L. R., 4 All., 69.
(4) *Ibid.*, 91.
(5) P. J. for 1885, p. 34.
(6) I. L. R., 13 Bom., 650.

1894.

RANCHOD MORA'R v. BEZANJI EDULJI.

JARDINE, J. :—Mr. Kálábhái for the appellant has contended that the first order which was made by Mr. Modi, Subordinate Judge, "rejecting" the application, is not one made under section 409 or 412. He was, however, unable to show us any other section under which it might have been passed. It was made in an inquiry expressly made under section 408. We are satisfied that we can refer it to section 409.

Section 413 then came in, creating, in my opinion, a bar to subsequent pauper suit by the following words :—"An order of refusal to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the *same right* to sue." Assuming for the moment that the words "same right" apply to the second application, section 413 constituted a statutable bar to the suit under section 11. If the result of the first application had been stated in the second, the Court would have rejected it under section 54(*c*) and section 407(*c*). But the Subordinate Judge, Mr. Modi, apparently *per incuriam* did not do so. After taking the evidence on the merits the bar created by section 413 was pointed out to his successor, Mr. Nánávatti, who dismissed the plaint, but explained that he looked on the cause as an application to sue as a pauper. Mr. Modi might, after refraining, as he did, from rejecting the second application at the preliminary hearing under section 407(*c*), have refused it under section 409 at the formal hearing under this last section—*Chattarpal* v. *Rája Rám*[1], as the statutable bar which I take to be an objection under section 407(*c*) might then have been pleaded by the opposite party or otherwise have come to the Subordinate Judge's knowledge.

Section 409 ends thus—"The Court shall then either allow or refuse to allow the applicant to sue as a pauper." A refusal to allow has been held open to review—*Adaji* v. *Manikji*[2]. Mr. Kálábhái argues that, as there was no refusal, but section 410 was applied, the leave given to sue as a pauper was final, except so far as it might be altered by review in the Court of the Subordinate Judge or by revision of the High Court. He cited *Parkinson* v. *Hanbury*[3], where Lord Justice Knight Bruce

(1) I. L. R., 7 All., 661. (2) I. L. R., 4 Bom., 414.
(3) 22 L. J. N. S. Ch., 979.

treated three years' acquiescence in an order giving leave to sue as a pauper as waiver on the part of the defendant. The report is curt; and there is no mention of bar to jurisdiction, a question arising under our Code. I do not think that question is excluded from the present case by the last sentence of section 409—*Chattarpal* v. *Rája Rán* (*supra*). I assent so far to Mr. Kálábhái's argument as to hold that when Mr. Modi allowed the second application under section 409, the cause rightly proceeded as a suit under section 410. The Subordinate Judge, Mr. Náṇávatti, heard it on the merits; and at a late stage the bar created by section 413 came to his knowledge. Unless that bar is treated as mere procedure as something that vanished under the last sentence of section 409 as soon as the second application to sue as a pauper was allowed, the bar was one to the jurisdiction, and the Subordinate Judge, being under section 410 required to deal with the cause as a suit, was right in dismissing it. He has rightly held that the final order is under section 412; and under that section the directions about costs and court-fees are legal. The cause had reached its penultimate stage when the bar to jurisdiction was pointed out. The decision in *Shekh Isuf* v. *Sidi Ibráhim*[1] seems to deal with a cause that had gone no further than orders allowing and rejecting the application.

I have considered whether the first part of section 413 deals with mere procedure or goes to the jurisdiction. The simile of a "bar" used there as in sections 11 and 14 points to jurisdiction; the order of refusal under section 409 prevents the applicant alleging pauperism any more in respect of the same right to sue. The two reasons for the rule of *res judicata*, the interest of the State that there should be an end of litigation and the hardship on the individual—*Lockyer* v. *Ferryman*[2], *Thákore Becharji* v. *Thákore Putáji*[3]—apply to the decision on pauperism, under section 409. There is no reason for encouraging pauper suits; and I do not think the mere omission of the first Subordinate Judge nor the laches of the opponent take the present case out of the rule, especially as the laches of an oppo-

(1) P. J., 1876, p. 96. (2) L. R., 2 App. Cas., 519 at p. 530.
(3) I. L. R., 14 Bom., 31 at p. 35.

1894.

RANCHOD MORÁR v. BEZANJI EDULJI.

nent may be collusive or result from a wish to get the suit tried cheaply to the injury of the public revenue. In *Naru* v. *Anpurnabái*[1] the bar is treated as one to the jurisdiction under section 310 of the Code of 1859. Taking the bar to be such, no consent of parties can confer jurisdiction—*Spooner* v. *Juddow*[2]; *The Government of Bombay* v. *Ranmalsingji*[3]; *Bibi Ladli* v. *Bibi Raje*[4]. The objection may like that of *res judicata* be taken at any stage of the suit or appeal—*Geeasoodin* v. *Rámchandra*[5]; *Muhammad* v. *Chattar*[6]; *Abaji* v. *Ramchandra*[7]—and the interests of the public revenue I think require us to hold that, as in the present case, the Court may take it when pointed out by the Government Pleader or other *amicus curiæ*.

The next question is, whether the second application is based on the "same right to sue." There has been but little argument on the meaning of this phrase: Mr. Kálábhái only cited *Náro* v. *Anpurnábái*. The phrase must, I think, mean either the same as "cause of action" or something less. If treated as tantamount to cause of action, I would hold that the phrase applies here, on the authorities I relied upon in *Thákore Becharji* v. *Thákore Putáji*. Both applications are for redemption of the same mortgaged property; thus the subject-matter and the relief prayed are the same in both. The *causa petendi* is the same; the applicant says the mortgage is paid off. There is also *eadem conditio personarum* in our opinion. What Mr. Kálábhái seeks to establish is that this part of the exception of *res judicata* does not exist; or, to put the argument in another form, that there is not *eadem quæstio*—*Chinniya* v. *Venkattachella*[8]. I incline to think that the phrase "same right to sue" means this question of right or, as it is called in *Shridhar* v. *Náráyan*[9], ground of right, though in conceivable cases it may mean *eadem conditio personarum*. Treating it as not commensurate with "cause of action," I am of opinion that it applies to the present case. There is no contradiction between the titles set up in the

(1) P. J., 1874, p. 218.
(2) 4 Moo. I. A., 353 at p. 375.
(3) 9 Bom. H. C. Rep., 242.
(4) I. L. R., 13 Bom., 660.
(5) P. J., 1873, 17.
(6) I. L. R., 4 All., 69.
(7) P. J. for 1885, p. 34.
(8) 3 Mad. H. C. Rep., 320, at p. 327.
(9) 11 Bom. H. C. Rep., 224, at p. 229.

two applications. In the earlier one he leaves the Court and his opponents to guess how he has a title to sue, as son and heir of his father, as if they could infer something about his status in the Hindu family from this mere description of himself. In the latter application he unfolds his status. There is no real difference between the two.

The Court confirms the decree of the Subordinate Judge with costs; and orders the appellant to pay the usual court-fees.

RÁNADE, J.:—The decision in this case turns entirely on the construction of sections 409, 412 and 413 of the Civil Procedure Code. The appellant, original plaintiff, as the heir of one of the mortgagors, applied in 1888 for leave to be allowed to sue in *formâ pauperis* for the redemption of a mortgage for Rs. 19,500. That application, No. 78 of 1888, was rejected on 29th November, 1888. The actual words of the order of rejection were as follow:—"Since the applicant does not wish to proceed with the application, I reject his application to be allowed to sue in *formâ pauperis*, and order him to pay opponents' costs, and bear his own." Plaintiff again applied in 1889 for leave to sue in *formâ pauperis* for the redemption of the same mortgage. The defendants did not either appear to oppose, or did not object, and the Government Pleader only urged that plaintiff was not a pauper. Khán Bahádur Modi granted this application, and it was registered as Suit No. 217 of 1890. The inquiry lasted over more than three years, and when the case was nearly ripe for judgment, the Government Pleader intervened on 29th September, 1890, and asked that the inquiry should not proceed further until plaintiff had paid the costs due to Government in respect of his rejected application of 1888. The lower Court advised plaintiff to pay the costs due to Government and the court-fees in the present suit, but plaintiff declined to do either, and thereupon the lower Court dismissed the plaint with costs under section 413, and ordered plaintiff to pay court-fees also under section 412.

Plaintiff preferred the present appeal in *formâ pauperis* from this order of the lower Court. The chief contentions of the appellant before us were—(1) that the lower Court was in error in dismissing the plaint, and in applying section 413 to this

1894.

RANCHOD MORA'R v. BEZANJI EDULJI.

suit. Plaintiff's previous application had not been disposed of under section 409, and section 413 was, therefore, not applicable to the case; (2) the lower Court had no jurisdiction to dismiss a plaint which had been duly registered; (3) it was also urged that the two applications were not made in the same right within the meaning of the first clause of section 413; (4) lastly, it was contended that the order directing plaintiff to pay court-fees and costs was improperly made under the circumstances of the case.

The issues for consideration are :—

(1) Whether the order rejecting plaintiff's first application was passed under section 409 ?

(2) Whether the lower Court was competent to dismiss the plaint under the bar created by section 413 ?

(3) Whether the two applications were made in the same right ?

(4) Was the order about costs and court-fees proper under the circumstances of the case ?

With regard to the first point, we are of opinion that the lower Court very properly held that the order passed on plaintiff's first application was an order under section 409 of the Civil Procedure Code. That section no doubt requires the Court either to allow or refuse the application, while the order in question was one of rejection. An order of rejection can no doubt be made under section 407, Chapter XXVI, but, like the order rejecting plaints (section 54), it has to be made on preliminary grounds before notice is issued, and before any inquiry is held into the applicant's pauperism. In the present case it is admitted that such an inquiry had commenced, and any order rejecting the application at that late stage cannot be considered to have been passed under section 407. There may also be orders dismissing the application under sections 97, 98, and in the circumstances of this case, when the applicant's pleader declined to proceed with the inquiry, such an order might have been made. But, as a matter of fact, the Judge, who decided the application, did not dismiss it, and he did not allow the applicant to withdraw under section 373. He rejected the application to be allowed to sue as a pauper.

This he could only do under section 409. The word "refuse" is used in section 408 as equivalent to the word "reject" used in section 407. In *Baldeo* v. *Gula Kuar*[1], where the applicant had withdrawn his petition to be allowed to sue in *formâ pauperis*, and the petition had been struck off, the High Court of Allahabad expressed its view that the application might well be regarded as rejected under section 409. Plaintiff's first application must, therefore, be regarded as disposed of under section 409, notwithstanding the slight ambiguity of the words used.

The next point to be considered is, whether it was competent to the lower Court, after having registered the application as a suit, and gone on with the inquiry for three years, to set aside the order granting plaintiff's application for leave to sue as a pauper, and dismissing the same. The Judge who made the order in 1890 was not the Judge who set it aside in 1893. This circumstance, however, can make no difference, for both orders were passed by the same Court. The appellant's pleader, Mr. Kálábhái, however, contended that the Court, which ordered plaintiff's second application to be registered as a suit, could not set it aside of its own motion without any objection from the other side. It is no doubt true that the defendants did not raise any objection on this head, and even the Government Pleader, who intervened, objected only to the inquiry being allowed to proceed further until the costs due to Government were paid. He urged this objection under the latter portion of section 413, which objection was plainly out of place, as the present suit was a pauper suit, and not a suit on which full court-fees had been paid. The lower Court, however, took action under the first clause of section 413, which provides that "the order of refusal under section 409 shall be a bar to any subsequent application of the like nature made in respect of the same right to sue." The question we have to consider in this case is thus whether the Court could, of its own motion, cancel its order registering plaintiff's second application as a suit, on the ground that such an application was barred by section 413. As a general rule, a Court cannot set aside any order passed by it of its own motion, but this rule does not apply to matters involving questions of jurisdiction, limitation, *res*

(1) I. L. R., 9 All., 129.

1894.

RANCHOD MORA'R v. BEZANJI EDULJI.

judicata, &c., which take away jurisdiction. Section 11 is explicit on the point, and it has been authoritatively held that when the jurisdiction of the Court is involved, the Judge cannot refuse to entertain the objection if it is patent on the face of the proceeding. In *Geeasoodin* v. *Rámchandra*(1) the objection about *res judicata* was taken notice of even in appeal. To the same effect are the rulings in *Kuppa* v. *Dorasami*(2); *Muhammad Ismáil* v. *Chattar Singh*(3); *Harsaran Singh* v. *Muhámmad Razá*(4); *Abáji* v. *Rámchandra*(5); *Toponidhee Dhirj* v. *Sreeputty Sahanee*(6); *Triloki Náth* v. *Pertáb Nárain*(7). When the objections do not affect the jurisdiction of the Court, they cannot be urged in appeal if they are not urged in time in the lower Court—*Fazal* v. *Gafar*(8); *Nawab Mahomed* v. *Moozuffur Hossein*(9); *Ex parte Manohar Bhivrav*(10). Perhaps the case most in point is that reported in *Shekh Isuf* v. *Sidi Ibráhim*(11). There, as here, the first application to sue in *formâ pauperis* had been rejected, and a second Judge had admitted a second application, and registered it as a suit. His successor cancelled the order registering the second application, and in appeal this Court reversed the last two orders, and rejected the application which had been registered as a suit. To the same effect is the ruling in *Náro* v. *Anpurnabái*(12), though that case is an authority in regard to another question involved in this case, namely, the interpretation of the words "in respect of the same right to sue" used in section 413. On the whole, therefore, we feel satisfied that the lower Court was not merely competent but bound to take notice of the bar created by the first clause of section 413.

The third point raised by the appellant relates to the question whether the two applications were made in the same right to sue. The bar created by the first clause of section 413 has no existence except where the two applications are of a like nature, and made in the same right to sue. It was contended that plaintiff's first

(1) P. J. for 1873, No. 17.
(2) I. L. R., 6 Mad., 76.
(3) I. L. R., 4 All., 69.
(4) *Ibid.*, 91.
(5) P. J. for 1885, p. 34.
(6) I. L. R., 5 Calc., 832.
(7) I. L. R., 15 Calc., 808.
(8) I. L. R., 15 Mad., 82.
(9) 5 Beng. L. R., 570.
(10) 2 Bom. H. C. Rep., 374.
(11) P. J. for 1876, p. 96.
(12) P. J. for 1874, p. 218.

application was made in his capacity as heir to his father, and the second application was made in his own right. We have had the two plaints translated, and we feel satisfied that this objection has no substantial foundation. In his present plaint plaintiff states (paragraph 10) that the properties in mortgage belonged to his grandfather, and "I have, therefore, as a grandson, a share in my own right in the ancestral property. Therefore under the said right, as also in my right as one of the male survivors of a joint Hindu family, I have brought this suit for redemption." The claim in the first application of 1888 was made by plaintiff in his right as heir to his father, who was one of the mortgagors. The insertion of the grandfather's name, and the attempt to trace title through him, does not alter the nature of the claim. Plaintiff's grandfather was not a party to the mortgage. Plaintiff's father and his uncles were the mortgagors, and the claim in both applications was substantially to redeem this mortgage of 1873 for Rs. 19,500. The two claims must, therefore, be regarded as having been in the same right to sue within the meaning of the first clause of section 413. The principal authority on this part of the case is the ruling in *Náro* v. *Anpurnabái* (*supra*) in which case the second application had been allowed on the ground that it was made in a different right to sue. The High Court, however, held "that the same set of facts which the mind at once grasps as jurally integral ought not to be made the basis of repeated proceedings, and the rule obtains that all the circumstances which exist when the former of two actions is brought, and can be brought forward in support of it shall be brought forward then, and not reserved for a second action arising out of the same events. Though the forms of action differ, the cause of action is identical, and the test is whether the evidence in support of both actions is substantially the same." This was also the test laid down in *Shridhar* v. *Bábáji*[1] as to what does or does not constitute a ground of right identical with the one relied upon in a previous suit. The matter is different when the grounds of right do not originate in the same transaction, and they give rise to different duties. Judged by these tests, plaintiff's applications in his own right, and as

(1) P. J. for 1874, p. 168.

1894.

RANCHOD MORA'R v. BEZANJI EDULJI.

heir to his father, originate in the same transaction represented by the claim to redeem the mortgage of his father. The cases cited by the appellant's pleader on this point—*Baboo Gooroo* v. *Baboo Huronáth* (1); *Thákore Becharji* v. *Thákore Pujáji*(2)—can be distinguished, for in these cases either the subject-matter, or the ground of right, were different. We must, therefore, overrule this objection also of the appellant. We accordingly hold (1) that the order rejecting the appellant's first application was an order under section 409, and that the refusal operated as a bar to the entertainment of the second application; (2) that the lower Court was not only competent but bound to take notice of this bar to its jurisdiction; (3) and that the two applications were made in the same right to sue, and not in different rights. The appellant was badly advised in not following the suggestion made to him by the Subordinate Judge in the Court below. His claim was rightly dismissed with costs under the circumstances of the case. Though the words used are not free from ambiguity, the lower Court has not disposed of the case as being still in the application stage. It has dismissed the plaint as in a regular suit, and the rulings in *The Collector of Ratnágiri* v. *Janárdan*(3), *Amichand* v. *The Collector of Sholápur*(4), *The Collector of Kánara* v. *Krishnáppa*(5) do not apply. The order about costs and court-fees calls, therefore, for no interference.

We accordingly reject the appeal, and confirm the order of the lower Court with costs on appellant.

Order confirmed.

(1) 7 C. W. R., 423.
(2) I. L. R., 14 Bom., 31.
(3) I. L. R., 6 Bom., 590.
(4) I. L. R., 13 Bom., 234.
(5) I. L. R., 15 Bom., 77.