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by auction, agreeably to the last mentioned precedent, which was laid down before the first mentioned precedent, and when it does not appear from the records that the defendants ask for the reversal of the said sale, or raised any objection thereto, this suit must proceed on the ground that the said sale is valid and regular, and must stand, *i. e.*, the plaintiff's husband and plaintiff must be entitled to the houses which were purchased at the said auction-sale."

Against this decision the defendants appealed to the High Court.

Baboo *Nallit Chandra Sen*, for the appellants, contended that the huts in question were immoveable property; that the sale by the Small Cause Court was without jurisdiction; and that the plaintiff's husband purchased nothing. He relied on the case of *Rajchandra Bose v. Dharma Chandra Bose* (1).

Baboo *Chandra Madhab Ghose*, for the respondent, urged that the huts were moveable property, and that the sale by the Small Cause Court was therefore valid. He cited the cases of *Kasi Chandra Dutt v. Jadu Nath Chuckerbutty* (2) and *George Meares v. Ackobur Sheik* (3) in support of his contention.

(1) *Ante*, p. 510.

(2) *Before Mr. Justice Bayley and Mr. Justice Macpherson.*

The 8th June 1868.

KASICHANDRA DUTT (PLAINTIFF) v.
 JADU NATH CHUKERBUTTY DE-
 FENDANT)*

Baboo *Mahini Mohan Roy* and *Atul Chandra Mookerjee* for the appellant.

Baboo *Abhai Charan Bose* for the respondent.

BAYLEY, J.—Upon this special appeal coming on for hearing, respondent took the preliminary objection that this is a case coming within the jurisdiction of the Small Cause Court, and that, under section 27, Act XXIII of 1861, no special appeal would lie.

On referring to the plaint, we consider that this objection is valid. After hearing the plaint read, we are clearly of opinion that the suit is one for "personal property, or for the value of such property" and for a sum not exceeding 500 rupees. Therefore, under section 6 Act XI of 1865, the suit would clearly be cognizable by Courts of Small Causes.

The plaint distinctly claims the materials, bamboos, post, veranda, &c., specifying that those materials appertain to four distinct thatched huts. It seeks a decree to break up and remove them or, as an alternative, to obtain their value to the extent of Rs. 29-8 as that share, which plaintiff's vendor by his sale transferred to plaintiff.

(3) S. C. C. R., 29.

* Special appeal, No. 2433 of 1867, from a decree of the Principal Sudder Ameen of Tipperah, dated the 31st July 1867, affirming a decree of the Moonsiff of that district, dated the 24th April 1869

The Court (E. JACKSON and MOOKERJEE, JJ.), owing to a conflict of opinion in the cases cited, referred the following points for the decision of a Full Bench :—

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1st.—“ Whether huts in this country are to be considered as moveable property within the meaning of section 19 of the Small Cause Court Act, or immoveable property ?” and

2nd.—“ When a Court of Small Causes had actually sold huts in execution of its decree, without any objection on the part of the judgment-debtor, whether the purchaser at such a sale acquires any title to those huts by virtue of such a purchase ?”

Before the Full Bench

Baboo *Nallit Chndra Sen*, for the appellants.—Section 19 of Act XI of 1865 declares that a Small Cause Court may issue execution against the person or the moveable property of the judgment-debtor, and with respect to the latter against any personal property within the jurisdiction of the Court (1). There is no definition given in the Act of the expressions “ moveable property” and “ personal property.”

In the Indian Succession Act X of 1865, immoveable property is defined to be “ land, incorporeal tenements, and things attached to the earth, or permanently fastened to anything attached to the earth,” and property of every description, besides this, is declared to be moveable. In Act XX of 1866, “ immoveable property includes land, buildings, rights to ways, lights, fisheries, or any other benefit to arise out of lands, and

In no sense can such a claim be, in our opinion, a claim to real property, but comes under section 6, Act XI of 1865, and thus by section 27, Act XXIII of 1861, no special appeal will lie.

In this view we dismiss the special appeal with costs.

(1) Section 19 of Act XI of 1865.—When a decree is passed in any suit of the nature, and amount cognizable under this Act, the Court passing the decree may, at the same time that it passes the decree, on the verbal application of the party in whose favor the decree is given, order immediate execution thereof by the issue of a warrant

directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court passing the decree, or against the moveable property of the judgment-debtor within the same limits. If the warrant be directed against the moveable property of the judgment-debtor, it may be general against personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any personal property belonging to the judgment-debtor within the same limits, and which shall be indicated by the judgment-creditor.

1872 **Things attached to the earth or permanently fastened to anything**
 NATTU MIAH which is attached to the earth ; but not standing timber, growing
 v. NANO RANI. crops, nor grass," and moveable property means "standing timber,
 growing crops, grass, fruit upon trees, and property of every other
 description except immoveable property." In Act I of 1868, "The
 General Clauses' Act," immoveable property means "land, bene-
 fits to arise out of land, and things attached to the earth, or per-
 manently fastened to anything attached to the earth ;" and move-
 able property is defined to be "property of every description,
 except immoveable property." In the Indian Penal Code, Act
 XLV of 1860, "the words moveable property are intended to
 include corporeal property of every description, except land and
 things attached to the earth, or permanently fastened to any-
 thing which is attached to the earth."

All these Acts are of general application ; and excepting perhaps Act XX of 1866, the definition of immoveable property in each of them, after mentioning certain particular things by name, concludes with the general words "things attached to the earth, or which are permanently fastened to anything attached to the earth." The fact that a thing can be removed from the earth would not make it according to these definitions moveable property. The test is whether the thing can be removed in its existing state, without changing its nature. A hut is a thing permanently attached to the earth. When it is removed, it is not a hut, but simply a collection of materials. A hut would, according to these definitions, be immoveable property. These definitions, except the one in Act XX of 1866, are of general application and are the same. See *Rajchandra Bose v. Dharmo Chandra Bose* (1), *Rahini Kant Ghose v. Mahabharat Nag* (2)

(1) *Ante*, p., 510.

(2) *Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.*

Judge of the Small Cause Court of Jessore :—

The 17th August 1868.

RAHINI KANT GHOSE (PLAINTIFF)
 v. MAHABHARAT NAG AND OTHERS
 (DEFENDANTS.)*

THE following case was submitted, for the opinion of the High Court, by the

This is an action brought by the plaintiff as auction-purchaser to recover from the defendants the thatched huts purchased by him, or their value, under the circumstances mentioned in the plaint, which runs as follows :—

"This is a suit for the recovery of Rs. 30 which are due to plaintiff on account of

* Reference by the Judge of the Small Cause Court at Jessore.