

*Jowahir Singh v. Guyan Singh* (.), it was held that a son cannot control his father's act in respect of a property, the succession to which is liable to obstruction; and it is only in respect of property not liable to obstruction that the wealth of the father and grandfather becomes the property of his sons or grandsons by virtue of birth.

We concur in these decisions. The decree of the Court below must be reversed as to two-thirds of  $12\frac{1}{2}d.$  of the property in suit, and it must be decreed that the plaintiffs do recover two-thirds of  $12\frac{1}{2}d.$  of the property claimed in the plaint, with mesne profits and costs of suit in proportion.

A similar decree will be made in the appeal No. 41 of 1872 between the same parties, where the property in suit is the mehal under the old settlement; and in appeal No. 42 of 1872 where the suit was against another purchaser.

Costs of the appeals to be borne by the parties in proportion.

*Decrees modified.*

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### ORIGINAL CIVIL.

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*Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Pontifex.*

BONOMALLY NAWN *v.* T. CAMPBELL.

1872  
Dec. 12 & 13.

*Jurisdiction of Calcutta Small Cause Court—Act IX of 1850, s. 28—Act XXVI of 1864, s. 2—Sum added to legal Claim for Purpose of giving Jurisdiction.*

A plaintiff cannot jurisdiction to the Small Cause Court by adding to his claim sums which he could not under any circumstances be entitled to recover. *Sikhur Chund v. Sooringmull* (2) distinguished.

CASE stated by the First and Second Judges of the Calcutta Court of Small Causes for the opinion of the High Court under Act XXVI of 1864, s. 7:—

The question which arises in this case has reference to the Court's jurisdiction.

“The provisions as to jurisdiction contained in Act IX of 1850 (the original Small Cause Court Act) are not identical

(1) 4 Agra H. C. Rep., 78.

(2) 1 Hyde, 272.

1872

BONOMALLY  
NAWN  
v.  
CAMPBELL

with those contained in Act XXVI of 1864 (the Small Cause Court Extension Act).”

The case then set forth Act IX of 1850, s. 28 (1), and Act XXVI of 1864, s. 2 (2), and proceeded :—

“ From those sections it will be seen that, while in claims for sums under Rs. 500 this Court has jurisdiction only in respect of the defendant dwelling, working, or carrying on business within the district of the Court, in claims for sums exceeding Rs. 500, this Court has an alternative jurisdiction, by reason merely of the cause of action having arisen within the local limits of its jurisdiction, without reference to the place where the defendant may be dwelling or working.

“ The case now under reference, which on the face of it purports to be a suit for the recovery of a sum over Rs. 500, was originally tried by the First Judge of the Court, who found that the plaintiff's cause of action had arisen within the local limits of the Court's jurisdiction.

“ It was however found that the plaintiff was only entitled to recover a sum considerably under Rs. 500, and that the balance of his claim had been thrown in, in order to bring his claim within the extended jurisdiction conferred by s. 2, Act XXVI of 1864, in cases where the cause of action had arisen within the local limits of the Court jurisdiction.

“ The First Judge also found that the defendant was not subject to the jurisdiction of this Court on any of the grounds set forth in s. 28, Act IX of 1850, and being of opinion that the case, as being in reality a claim for less than Rs. 500, fell

(1) *Act IX of 1850, s. 28.*—“ All persons held, under the said Act IX of 1840, shall extend to the recovery of any debt, damage, or demand exceeding the sum of Rs. 500, but not exceeding the sum of Rs. 1,000, and to all actions in respect thereof \* \* \* \* provided that the cause of action shall have arisen, or the defendant at the time of bringing the action shall dwell or carry on business or personally work for gain within the local limits of the jurisdiction of the Court.”

(2) *Act XXVI of 1864, s. 2.*—“ The jurisdiction of the Courts held, or to be

properly within the provisions of that section, held that he had no jurisdiction to try it.

1872

BONOMALLY  
NAWN  
v.  
CAMPBELL.

“ On a motion before two Judges for a new trial, it was contended for the plaintiff that, inasmuch as the amount which the plaintiff sued to recover was over Rs. 500, the case fell within s. 2, Act XXVI of 1864, and that the First Judge was wrong in holding that he had no jurisdiction, to try it. In support of this view the case of *Sikhur Chund v. Sooringmull* (1), in which a similar question, arising under s. 12 of the Letters Patent in respect of the jurisdiction of the High Court, had to be determined, was brought to our notice.

“ We were however unable to accept the view that a claim, not properly within our jurisdiction, could be brought within it by adding to it a further claim not made in good faith. We consequently rejected the application for a new trial.

“ With reference to, the concluding remarks made by Wells, J., in the case referred to, in which he attributed to the High Court the power of adequately reimbursing a defendant against whom an excessive claim has been brought in bad faith, it is to be observed that, where a judgment is passed by this Court in favor of plaintiff for any part of his claim, no power is given for compensating a defendant. But as the decision cited in which Wells, J., is reported to have stated that he had the concurrence of the late Chief Justice in the view he expressed raises in our minds a doubt as to the correctness of our opinion, we have deemed it right to refer the matter for the opinion of the High Court.”

The action was brought on a bond, whereby the defendant had bound himself to indemnify the plaintiff, who was the purchaser of certain mills, against any

“ let, suit, trouble, eviction, ejection, interruption, or denial whatsoever, of, from, or by one Mr. C. Betts, or any other person or persons claiming any interest therein, under, or in trust for him.”

The mills had been attached in execution of a decree obtained by one Jadunath Ghose against Betts; the plaintiff paid the amount claimed into Court to stay the sale, and sued Jadunath

(1) 1 Hyde, 272.

1872  


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 BONOMALEY  
 NAWN  
 v.  
 CAMPBELL.

Ghose to recover the sum so paid. He afterwards, by his attorney, wrote a letter of demand to the defendant claiming payment of Rs. 557-5 for loss and damages sustained by him in terms of the bond of indemnity, the following being the items of claim :—

Amount paid into Court to stay the sale of the mills in the suit of Jadunath Ghose v. C. Betts ... ..	122	4	6
Costs incurred by our client in regard to a suit against J. N. Ghose ... ..	175	8	3
Amount paid to the landlords, which was payable by you	144	0	0
Assessment bill from January to June ... ..	13	8	0
Damages sustained by our client ... ..	102	0	0
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	Rs.	557	5 0

The defendant did not pay the sum claimed by the plaintiff, and the latter thereupon brought the present action. The summons stated that the action was to recover Rs. 557-5 payable by the defendant to the plaintiff under the bond of indemnity, Rs. 279-12-9 of which sum was payable in respect of "moneys payable by the defendant to other parties which the plaintiff was compelled to pay them on the defendant's account." On the argument of the reference before the High Court, it was agreed that the bond, the letter of demand, and the summons should be taken as part of the case stated.

Mr. *Kennedy* for the plaintiff contended that, even if the amount claimed were less than Rs. 500, the Small Cause Court would have jurisdiction. Act IX of 1850 provides for the jurisdiction of the Small Cause Court: s. 5 gives the local limits; s. 25 gives the jurisdiction as to amount, viz., in all suits where the debt or damage claimed, &c., is not more than Rs. 500; and s. 28 refers to the persons subject thereto. Then s. 2, Act XXVI of 1864, extends the jurisdiction as to amount, and in defining it as to persons, gives the Court a new jurisdiction, namely, where the cause of action has arisen within the local limits. But by s. 16, Act XXVI of 1864, that Act and Act IX of 1850 are to be read as one Act, as if the provisions in Act IX of 1850, not inconsistent with the provisions of Act XXVI of

1864, were thereby repealed and re-enacted. By virtue of the two Acts thus read, the Court has jurisdiction in suits where the debt or damage claimed is under Rs. 500, provided the cause of action shall have arisen within the local limits of the Court's jurisdiction. In *Lazarus v. Victor* (1), Macpherson, J., ruled the contrary, but that was an undefended case, in which the point was not fully argued, and the Court might therefore still consider the question open. [COUCH, C.J. (after consulting with Macpherson, J., observed)—We think the question as to the jurisdiction of the Small Cause Court over suits of smaller value than Rs. 500 was decided by Macpherson, J. His decision has been acted on down to the present time, and I do not think we can open the question now.] The jurisdiction must be determined by the sum claimed in the suit, and not by the sum ultimately recovered—*Shikhur Chund v. Sooringmuli* (2) *Raja Neelmonnee Singh Deo v. Gordon, Staurt & Co.* (3), and *Prannath Roy Chowdry v. Ranees Surnomoyee* (4). COUCH, C.J.—The Privy Council there gave leave to appeal under the circumstances of that case. Here the Judges of the Small Cause Court seem to consider that the claim for damages was simply thrown in to give jurisdiction.] The question of good faith was not raised at the trial, nor is it directly raised on this reference. The words “thrown in to give jurisdiction” are vague. The Judges appear to have thought that they had not full power to deal with the costs, if the suit was improperly brought: s. 52, Act IX of 1850, gives them such power.

Mr. *Apcar* for the defendant.—There is a distinction between the wording of s. 25, Act IX of 1850, and s. 2, Act XXVI of 1864. In the former the words are “all suits in which the debt or damage claimed, &c., may be brought,” whereas in the latter the words are “the jurisdiction of the Courts held or to be held under the said Act IX of 1850 shall extend to the recovery of any debt, &c.” In *Sikhur Chund v. Sooringmull* (2), Wells, J., observed that the words “sued for” used in cl. 12 of the Letters

(1) 2 Hyde, 258.

(3) 1 I J., N. S. 356.

(2) 1 Hyde, 272.

(4) 7 Moo. I A., 553.

1872  
 BONOMALLY  
 NAWN  
 v.  
 CAMPBELL.

Patent, 1865, pointed to something different from the amount recovered. It is clear that the plaintiff might have sued in the High Court and have recovered costs—*Duff v. Fisher* (1). [COUCH, C.J.—If this had been a *bonâ fide* demand for over Rs 500, the Small Cause Court would have had jurisdiction.] There is the finding that those items were thrown in for the express purpose of giving jurisdiction; see *Mutu v. Veerapah Chetty* (2), [COUCH, C.J.—There the damages were not claimed in the suit, and the appeal is determined by the value of the suit.] Yes, but the principle applies; they were there claimed for the purpose of giving a right appeal. The Court may have to go into evidence to see whether it has or has not jurisdiction, but it cannot proceed where it finds that it has not; see *Thompson v. Ingham* (3) and *Joseph v. Henry* (4), decided on s. 58 of 9 & 10 Vict., c. 95, which is similar to s. 25 of Act IX of 1850.

Mr. Kennedy in reply.

The judgment of the Court was delivered by

COUCH, C.J.—It is stated in the case which has been sent to us that the suit, which on the face of it purports to be a suit for the recovery of a sum over Rs. 500, was originally tried by the First Judge of the Small Cause Court, who found that the plaintiff's cause of action had arisen within the local limits of the Courts jurisdiction. It was, however, found that the plaintiff was only entitled to recover a sum considerably under Rs. 500; and that the balance of his claim had been thrown in, in order to bring his claim within the extended jurisdiction conferred by s. 2, Act XXVI of 1864. The First Judge also found that the defendant was not subject to the jurisdiction of the Court on any of the grounds set forth in s. 28, Act IX of 1850; and being of opinion that the case, as being in reality a claim for less than Rs. 500, fell pro-

(1) 3 B. L. R. App., 10.

(2) *Ibid.*, App. 21.

(3) 1 L. M. & P., 216.

(4) *Id.*, 338.

perly within the provisions of that section, held that he had no jurisdiction to try it.

1872

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 BONGOMALLY  
 NAWN  
 v  
 CAMPBELL.

I think taking this finding in connexion with the matters which have been brought before us, and it is agreed are to prove part of the case, *viz.*, the summons, the particulars of the demand contained in the letter, and the bond, that this finding means that the plaintiff, in order to give jurisdiction to the Small Cause Court, claimed as damages sums which by law he could not recover—which he could not be entitled to at all—and added them to his claim for that purpose. In such a case as this, I think the Small Cause Court has not jurisdiction. The plaintiff could not give jurisdiction, merely by adding to his claim sums which he could not under any circumstances be entitled to recover. The decision of Wells, J., in the case referred to (1) is quite in accordance with this view because it is stated there that the suit “was a suit to recover Rs. 848-12 for damages from the defendants, who had failed to fulfil their contract,” and the learned Judge said that “the plaintiffs had, owing to the evidence adduced by them being defective, failed to prove that they had sustained damages to a larger amount than Rs. 75.” The case was not that they had put forward a claim for damages which they could not properly recover, but the evidence being defective, they could not succeed in getting more than Rs. 75; and the learned Judge held that in such a case the Court had jurisdiction under the words in the Letters Patent, cl. 12, “in which the debt, or damage, or value of the property sued for does not exceed Rs. 100.” There the suit was *bonâ fide* brought for a sum exceeding Rs. 100, and the jurisdiction of the Court could not be taken away because the evidence was defective. The other part of the judgment as to the suit being brought in bad faith, and the Court being able to compensate the defendant by awarding costs against the plaintiff, was extra-judicial. The Court’s having such a power does not affect its jurisdiction. Has the plaintiff in this case increased his claim by adding to it an amount which could not be included in it? If he has, he ought not to be allowed by so

(1) *Sikhur Chund v. Sooringmull*, 1 Hyde, 272.

1872  
 BONOMALLY  
 NAWN  
 v.  
 CAMPBELL] doing to give the Small Cause Court jurisdiction, and we must say that in such a case as that the Small Cause Court has no jurisdiction. As the plaintiff has done that, and has taken the opinion of this Court on the doubts which arose in the minds of the Judges of the Small Cause Court, we must say that Mr. Kennedy's client must pay the costs of reversing this case for the opinion of this Court.

Attorney for the plaintiff : Baboo Kallynauth Mitter.

Attorney for the defendant : Mr. Moscs.

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APPELLATE CIVIL.

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1872  
 Sept. 11

Before Sir Richard Couch, Kt., Chief Justice and Mr. Justice Ainslie.

NUTHOO LALL CHOWDHRY AND OTHERS (PLAINTIFFS) v. SHOUKKEE  
 LALL AND OTHERS (DEFENDANTS).\*

See I. L. R.  
 3 Cal 353.

*Res-judicata*—Act VIII of 1859, s. 2.—*Suit on Joint Bond.*

*D* and *B* executed a bond, by which they mortgaged certain lands as security for a loan taken by them from the plaintiffs. A suit was brought, and a decree was obtained by the plaintiffs against *D* and *B* under which they recovered a portion of the amount due on the bond. The plaintiffs now sued *S.* and others, on the ground that they were joint proprietors of the land mortgaged, that the loan was taken by *D* and *B* as managers for the use of all the parties interested and for carrying on their joint business and trade, and that therefore they were all jointly liable. *Held*, that the suit could not be maintained.

*Ramnath Roy Chowdhry v. Chunder Sekkur Mohapattur* (1) dissented from.

ON the 11th of Jeit 1271 Fustee (1st June 1864), the defendants, Domun Lall and Bhawani Pershad, borrowed from the plaintiffs at Mozufferpore Rs. 20,000 on a bond, which was as follows :—

We are, Domun Lall, son of the late Chummun Lall, and Bhawani Pershad, son of the late Beharry Lall, inhabitants, proprietors, and shareholders of Mouzah Jurooah, Pergunnah Hajeeperc.

\* Regular Appeal, No. 177 of 1871, from a decree of the Additional Judge of Tirhoot, dated the 19th of May 1871.