

costs incurred in the appeal, and by what parties, and in what proportions, such costs, and the costs in the original suit, are to be paid." The decree of the Appellate Court is, therefore, to be an original decree in respect of all the costs, both of the appellate and of the first Court; and upon that ground it appears to us that in any case a party would be entitled to a period of 3 years from the date of such decree to execute that decree in respect of costs of the lower Court, as well as the costs of the Appellate Court. In considering the right of the decree-holder, it appears to us to make no difference whether the decree expressly provides for, or in detail refers to, the costs in the lower Court, or merely incorporates the order of the lower Court as to the costs by affirming the decree. In either case the decree of the Appellate Court is "a judgment decree or order" as to such costs, within the meaning of section 20 of Act XIV. of 1859, from which a new period of limitation can be computed.

In the case immediately before us no difficulty which might exist in ordinary cases stands in the way of the Crown. The Crown is not named in the 20th section of Act XIV. of 1859, and the 17th section of that Act expressly provides that "this Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any public claims whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force." The right of the Government to the stamp fees in question is a public right. It is, therefore, clear that section 20 of Act XIV of 1859 has no application to this case. The appeal is dismissed with costs.

1869

SHAMI
MOHAMMEDI
v.
MUNSKI MO
HAMMED AL
KHAN.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

KAPALI BEWA (PLAINTIFF) v. KESHARAM KUCH (DEFENDANT).*

Special Appeal—Suit by Heir—Small Cause Court—Act XI. of 1865, s. 6.

1869
Feb'y. 4.

The widow and heiress of a deceased person, sued the defendants to recover personal property, valued at Rs. 200, said to have been taken by them from deceased in his life time.

Held, that a special appeal was barred by section 27 of Act XXIII. of 1861.

Baboo Ja dwath Seal for appellant.

Baboo Abhay Choram Bose for respondent.

The judgment of the Court was delivered by—

NORMAN, J.—We have been prevented from going into the merits of this case by a preliminary objection taken by the respondent's vakeel, that, under section 27 of Act XXIII. of 1861, no appeal lies, upon the ground that the suit is one cognizable by the Small Cause Court. We think that that objection is

* Special Appeal, No. 2054 of 1868, from a decree passed by the Deputy Commissioner of Sibsagar, dated the 30th March 1863, reversing a decree of the Sudder Ameen of that district, dated the 7th August 1867.

1869 well founded. The suit is for "personal property," valued at Rs. 200, said to have been taken from the deceased in his lifetime, and carried away by the defendants. The plaintiff makes title as widow and heiress of the deceased, claiming such personal property or its value. We think this is a matter within the cognizance of a Small Cause Court, under section 6 of Act XI. of 1865. The special appellant's vakeel contends that the suit falls within the description of a suit "for a share or part of share under an intestacy" within the meaning of those words in the 2nd proviso in that section. But we think that those words are intended to apply to suits by persons claiming as heirs against other persons similarly entitled, in order to determine their respective rights and interests, and to suits against persons administering the estate of a person who has died intestate, where the share or proportion to which the claimant is entitled is in question.

APANI BHWA
v.
KESHRAM
KUCH.

It is quite clear that if the plaintiff had alleged that her husband made a will by which he devised his property to her, and she as his devisee or executrix had sued for the personal property or its value, there would be nothing in the 2nd proviso to prevent the Small Cause Court from having cognizance of this suit. It would be absurd to hold that a suit to recover the property of the deceased against a wrong-doer is maintainable in a Small Cause Court by an executor or devisee, and not by the heir. We think that no such absurdity was intended by the proviso in question.

For the above reasons, no special appeal lies. As the case has not been heard on the merits, we give no costs.

Before Mr. Justice Loch and Mr. Justice Mitter.

1869
Feb'y. 4.

GOLAM ASHGAR (JUDGMENT-DEBTOR) v. LAKHIMANI DEBI AND OTHERS
(JUDGMENT-CREDITORS.)

Execution—Limitation—Bona fide Application.

An application was made on the 13th February 1862, for execution of a decree and was struck off on the 31st January 1863. A fresh application was made on the 13th April 1863, but nothing was then done. A further application was made on the 9th August 1865, and certain property was then attached by the decree-holder.

Held, that the Judge should have enquired whether the former applications were *bona fide* and sufficient to keep the decree alive; if not, proceedings under the latest application would be barred by limitation. Case remanded accordingly.

Baboo Upendra Chandra Bose for appellant.

Baboo Girish Chandra Mookerjee for respondents.

Miscellaneous Special Appeal, No. 496 of 1863, from a decree of the Judge of the 24-Pergunnas, dated the 22nd August 1866, affirming a decree of the Sudder Moonsiff of that district, dated the 13th July 1863.