

against the plaintiff, and that, in consequence of that false charge, the plaintiff was put to considerable inconvenience, and suffered loss of reputation, having been held to bail by the criminal authorities, and prevented from going to his house until he had furnished such bail. There can be no question that this was productive of inconvenience and loss of reputation to the plaintiff, and the award of 20 rupees as damages was by no means an unreasonable one under the circumstances of the case. We, therefore, dismiss the special appeal with costs.

The 27th January 1871

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges.*

Special Appeal — Contract — Debt — Section 6, Act XI. of 1865.

Case No. 1730 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Kajshahye, dated the 24th June 1870, affirming a decision of the Moonsiff of that District, dated the 22nd March 1870.

Rash Monee Debia (one of the Defendants),
Appellant,

versus

Rajah Ram Sircar (Plaintiff), *Respondent.*

Baboo Kalee Mohun Doss and Mohinee Mohun Roy for Appellant.

Baboo Bhyrub Chunder Banerjee for Respondent.

A servant borrowed on account of his master a sum of money which was partly spent in satisfaction of his master's debt, and partly taken by the latter and spent for his own private purposes. No re-payment having been made by the master, the lenders took out a decree against the servant, who thereafter sued the master to recover the money.

HELD that the legal presumption was that the money was advanced on account of defendant on the understanding that it would be repaid; and that the action was one for debt within the meaning of Section 6 of the Small Cause Court Act.

Bayley, J.—I AM clearly of opinion that no special appeal will lie in this case.

The facts are these: The plaintiff, who was a servant of the defendant, went to some mohajuns, and borrowed a certain sum of money, which was applied in the following

manner, *viz.*, a portion was spent in satisfaction of the debt of the defendant, and the rest was taken and spent for the defendant's own private purposes. No re-payment of the money was made by the defendant to the plaintiff, and a decree was taken out by the lenders of the money against the plaintiff. After this decree, the plaintiff brings this suit, and asks for re-payment of the money which he borrowed, and spent, and made over for the defendant's purposes.

The preliminary objection taken by the respondent to the hearing of the special appeal is to the effect that no special appeal would lie, as the suit is for a debt under 500 rupees. On the other hand, it is contended that there was no implied contract between the parties; that it cannot be shown when the liability commenced and when it ceases; and that, therefore, the transaction bore no such character as would bring it within the Small Cause Court Act. A case reported at Volume VII., page 377, Weekly Reporter, has been cited in support of this contention.

The facts stated at the commencement of this judgment are admitted on both sides, and it seems to be quite clear that, when a party under such a state of facts asked for the re-payment of the money, he sues for a debt within the substantial meaning of Section 6 of the Small Cause Court Act.

The case cited is altogether a case of a different nature. It was a special case of the liability of co-sharers in a joint undivided revenue-paying estate to pay their quota of Government revenue, and the whole question there turned on the position of the co-sharers and the liability of the estate on account of the non-payment of the arrears of Government revenue. It was there held that, in the event of such payments by one co-sharer and a suit for contribution thereupon, the case does not come within the purview of Section 6, Act XI. of 1865. In this case, however, there is no such speciality. It is a case of money borrowed and paid on account of the defendant, and, it must be legally supposed, upon an understanding that the defendant will repay the money to the plaintiff.

In this view, I think the case is one of a nature cognizable by a Court of Small Causes, and, as such, no special appeal will lie.

The appeal is dismissed with costs.

Mitter, J.—I think this action was one for debt. Upon the facts stated on the record, it appears that the plaintiff advanced a certain sum of money to the defendant for a particular purpose, and that there was an understanding between them that the money should be repaid by the latter. The value of the suit being below Rupees 500, no special appeal lies to this Court under the provisions of Section 27, Act XXIII. of 1861.

The 27th January 1871.

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges.*

Accretions—Section 4, Regulation XI. of 1825.

Case No. 1738 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Rajshahye, dated the 24th June 1870, affirming a decision of the Moonsiff of Pubna, dated the 31st December 1869.

Gobind Monee Debia (Plaintiff), *Appellant,*

versus

Dino Bundhoo Shaha and others (Defendants),
Respondents.

Baboo Mohinee Mohun Roy for Appellant.

Baboos Sreenath Doss and Bhugobully Churn Ghose for Respondents.

Where lands become annexed to a jote by gradual accretion within the meaning of Section 4, Regulation XI. of 1825, the jotedar is entitled to hold them on the same principle, and under the same legal conditions, as he holds the parent estate.

Mitter, J.—THE first question which the Lower Courts had to determine in this case was, whether the lands in dispute had been annexed to the plaintiff's jote by gradual accretion, within the meaning of Clause 1, Section 4, Regulation XI. of 1825. Both the Lower Courts, however, have dismissed the suit on the ground that, the Government being the owner or proprietor of the chur,

the plaintiff has no right to sue for the reversal of the settlement made by Government with the defendant, or for possession of the lands in question.

We are of opinion that this judgment is erroneous. The Government, no doubt, is admitted on all sides to be the proprietor of the lands; but if the lands were annexed to the plaintiff's jote by gradual accretion, the plaintiff would be entitled to hold them precisely on the same principle and under the same legal conditions as he would be entitled to hold the parent estate to which they have accreted. This point has been frequently ruled by the Court, and all that we have now to say is that the words of Clause 1, Section 4, Regulation XI. of 1825, are clear, and cannot be overlooked.

We, therefore, remand the case to the first Court with directions to make the Government a party to the suit, and then to decide it on the issues arising from the pleadings.

The costs of this appeal will abide the ultimate result.

The 27th January 1871.

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges.*

Refusal to examine witnesses — Special appeal.

Case No. 1753 of 1870 under Act X. of 1859.

Special Appeal from a decision passed by the Judge of Bhaugulpore, dated the 11th June 1870, affirming a decision of the Deputy Collector of Monghyr, dated the 7th January 1870.

Osman Singh and others (Plaintiffs),

Appellants,

versus

Chummun Mahtoon and others (Defendants),
Respondents.