

process of any Court," &c. If these are not goods and chattels taken in execution under the process of the Court, they do not come within the words of that section. What it was intended for is that when the bailiff had, in execution of the order of the Small Cause Court, seized property which, if it were the property of the defendant in the suit, might be taken in execution, and another person had put in a claim to it, the claim should be summarily dealt with by the Small Cause Court. But here the bailiff has taken in execution that which, even if it were the property of the debtor, he would not be at liberty to take; and though it may seem hard that the claimant should be obliged to resort to a suit in order to establish his right, and to prevent his property being sold, that is the proper remedy. The bailiff, by seizing what the warrant of the Small Cause Court could not authorize him to seize, has been guilty of an illegal act, trespass, for which he is liable to be sued, and for which he may have to pay such damages as the owner of the huts may have suffered in consequence. Seeing what is stated in the case by the Judge of the Small Cause Court, he will probably not suffer any serious injury. An order will be made which will set matters right. I think we must answer both the questions which have been put to us as the learned Judge has decided, that huts are not goods and chattels within the meaning of the Act, and that the Judge was right in dismissing the claim.

The 1st May 1873.

*Present:*

The Hon'ble Sir Richard Couch, *Kt., Chief Justice*, and the Hon'ble F. A. Glover, *Judge*.

Act VIII. (B.C.), 1869—Postponement of Execution-sale—Jurisdiction—High Courts Act, s. 15.

In the Matter of

J. G. Bagram, *Petitioner*.

*Mr. M. P. Gasper* for Petitioner.

Where, in a case under Act VIII. (B.C.) of 1869, a Moonsiff, on a claim being preferred to property attached in execution, postponed the sale of it without taking security, or having the amount of the decree deposited:

HELD that his proceeding, though erroneous, was in a case in which he had and exercised jurisdiction, and that his decision ought not to be set aside under the 15th section of the High Courts Act.

*Couch, C.J.*—In this case, according to the statement of the petitioner, the property

was attached in execution of a decree under Act VIII. of 1869 (B.C.), and a claim was preferred to it. The Moonsiff received the claim, and has, after an investigation of it, ordered that the claim be admitted, and the property be released, and the claimant's pleader's fees be paid by the decree-holder.

It is now objected that the decision of the Moonsiff was without jurisdiction on the ground that the amount of the decree was not deposited in Court, or security given for it.

The jurisdiction of the Moonsiff is given by section 246 of Act VIII. of 1859, which authorizes the Court, when a claim is preferred to attached property, to investigate it with the like powers as if the claimant had been originally made a defendant to the suit. Section 247 enables the Court, if it appears necessary, to postpone the sale for the purpose of making the investigation. In cases under Act VIII. of 1869 (B.C.), the power is subject to a further qualification; the Court is not to postpone the sale unless the amount of the decree is deposited or security given for it. But the jurisdiction to investigate the claim does not depend upon that. The jurisdiction is founded upon a claim being made. The Moonsiff cannot deal with the question of postponing the sale until he has acquired jurisdiction, and is proceeding to investigate the claim by virtue of it; and his postponing the sale without taking security, or having the amount of the decree deposited, is not an act, either without jurisdiction over the subject-matter or in the proceeding, or in excess of his jurisdiction. It is an erroneous proceeding in a case in which he has jurisdiction, and is exercising it. He may have acted erroneously in this case in postponing the sale without requiring the deposit or the security, but his decision allowing the claim is a decision within his jurisdiction. I do not think that we ought, under section 15 of the High Courts Act, to interfere and set the decision aside, because, in the course of his proceeding, he has erroneously postponed the sale. The result shows that the sale ought not to be made, nor would the decree-holder be entitled to receive the money which, it is contended, ought to have been deposited. The application is rejected.

*Glover, J.*—I concur.