

## APPELLATE JURISDICTION (a)

*Referred Case No. 14 of 1863.*SHANMUGA *against* MEDDLETON.

Act XLII of 1860, Sec. 6, does not alter or interfere with the jurisdiction of the Military Courts of Requests constituted by Stat. 20 and 21 Vict., chap. 66, Sec. 67.

CASE referred for the opinion of the High Court by R. Davidson, Judge of the Court of Small Causes at Chittur. The plaintiff in Suit No. 1155 of 1863 sued the defendant, an European officer of the 21st Regiment, Madras Native Infantry, stationed at Vellore, for rupees 46-5-6, being wages due to him as the defendant's servant and the value of goods bought by him for the defendant's use. The Judge of the Small Causes Court adjourned the case for further consideration as to whether the Suit was not barred by Act XLII of 1860, Sec. 6, and requested the High Court, if it should think fit, to sanction the disposal by him of the suit, Section 6 of Act XLII of 1860 enacts that "Whenever a Court of Small Causes is constituted under this Act, no suit cognizable by such Court under the provisions of this Act shall be heard or determined in any other Court having any jurisdiction within the local limits of the jurisdiction of such Small Cause Court. Provided that nothing in this Act shall be held to take away the jurisdiction which a Magistrate, or a person exercising the powers of a Magistrate or an Assistant or a Deputy Magistrate, can now exercise in regard to debts or other claims of a civil nature; or the jurisdiction which can be exercised by Village Munsifs or Village and as to his future means of payment, and shall call upon the plaintiff to show cause why he does not proceed against any property of which the defendant is possessed, and why the defendant should not be discharged, and should the plaintiff fail to show cause, the Court may direct the discharge of the defendant from custody. Pending any enquiry which the Court may consider it necessary to make into the allegations of either party, the Court may leave the defendant in the custody of the Officer of the Court to whom the service of the warrant was entrusted, on the defendant depositing the fees of such Officer, which shall be at the same daily rate as the lowest rate charged in the same Court for serving process; or if the defendant furnish good and sufficient security for his appearance at any time when called upon while such enquiry is being made, his surety or sureties undertaking in default such appearance to pay the amount mentioned in the warrant, the Court may release the defendant on such security."

1863.  
November 16.  
R. C. No. 14  
of 1863.

(a) Present : Scotland, C. J. and Phillips, J.

1863. or District Pancháyats under the provisions of the Madras  
 November 16. Code, or by Military Courts of Requests, or by Cantonment  
 R. C. No. 14 Joint Magistrates invested with Civil jurisdiction under Act  
 of 1863. III of 1859, or by a single Officer duly authorized and  
 appointed under the rules in force in the Presidency of Fort  
 St. George and Bombay respectively, for the trial of small  
 suits in military bazars, in cantonments, and stations occu-  
 pied by the troops of these Presidencies respectively, or by  
 Pancháyats in regard to suits against Military persons, ac-  
 cording to the rules in force under the Presidency of Fort  
 St. George.”

Statute 20 and 21 Vic., chap. 66, Section 67 enacts that  
 when troops are serving beyond the jurisdiction of the Courts  
 of Requests or other Courts for enforcing small demands at  
 Calcutta, Madras and Bombay respectively, “actions of debt  
 and all personal actions against officers shall be cognizable  
 before a Court of Requests composed of military officers, *and  
 not elsewhere*, provided that the value in question shall not  
 exceed 400 Company’s rupees.”

No counsel were instructed.

The Court delivered the following

JUDGMENT :—The question submitted for our decision is  
 “whether the claim being against a European military of-  
 ficer, the suit is barred by Sec. 6, Act XLII of 1860.

Before the passing of Act XLII of 1860, the jurisdic-  
 tion of Military Courts of Requests to try suits of the nature  
 of that stated in the case, was clearly made exclusive of all  
 other Courts by the enactment in Section 67 of the Statute  
 20 and 21 Vict., cap. 66; and the point we have to con-  
 sider is whether or not the express negative words of the  
 section, “and not elsewhere,” have been impliedly repealed  
 by Act XLII of 1860, and concurrent jurisdiction in such  
 suits given to Courts of Small Causes throughout the coun-  
 try. The construction of the Act at which we have arrived,  
 after some doubt, is that it has not the effect of altering or  
 interfering with the jurisdiction of the peculiar military  
 tribunal constituted by the Statute. The proviso in Section  
 6 of the Act is not simply a qualification of the enactment  
 preceding it in the same section and providing for exclusive

jurisdiction. Its language is that nothing in the Act shall be held to take away the jurisdiction which can be exercised by Military Courts of Requests.

1863.  
November 16,  
R. C. No. 14  
of 1863.

It must therefore be construed with reference to the other jurisdiction-sections (sections 3 and 4); and so construed, and, considering what the object and intention of the Act were, we come to the conclusion that it leaves in full force the provision in the Statute for the exclusive cognizance by Military Courts of Requests of suits like that in the present case.

APPELLATE JURISDICTION (a)

*Special Appeal No. 156 of 1863.*

RÁMEN NÁYAR.....Appellant.

KANDAPUNI NÁYAR.....Respondent.

A kánam-holder who denies his janmi's title forfeits his right to hold for twelve years.

*Special Appeal No. 27 of 1862 (Supra, p. 14) followed.*

THIS was a Special Appeal from the decision of K. Kellu Náyar, the Principal Sadr Amin of Calicut, in Appeal Suit No. 659 of 1861, affirming the decree of the District Munsif of Calicut in Original Suit No. 290 of 1859. This suit was brought by a janmi to redeem a kánam mortgage made in 1850. The defendant denied the janmi's title.

1863.  
November 21.  
S. A. No. 156  
of 1863.

*Karunagara Manavan*, for the appellant, the defendant, contended that his client, even though he were a kánam-holder under the plaintiff, could not be ousted before the lapse of twelve years from the date of the kánam.

*Mayne* for the respondent, the plaintiff, was not called upon.

The Court delivered the following

JUDGMENT :—In *Special Appeal No. 27 of 1862 (b)* the Chief Justice and Mr. Justice Phillips dismissed the Special Appeal of the second defendant, who had alleged a title altogether adverse to the plaintiff who alleged the first

(a) Present : Frere and Holloway, JJ.

(b) *Supra*, p. 14.