

It is quite clear that the mere fact of an agreement between a sub-renter and a renter being exempt from a stamp does not affect the question. The renter for his own benefit seeks this collateral security for the fulfilment of the sub-renter's contract; and he might, at pleasure, dispense with it. It is strictly therefore a contract between private persons, to which the Stamp Act in force at the time of its being entered into, applies. The bond, therefore, we think was not exempted from a stamp.

1863.
February 2.
R. C. No. 4
of 1863.

APPELLATE JURISDICTION. (a)

Referred Case No. 5 of 1863.

CHINNASVAMI HAWÁLDÁR *against* ANONYMOUS.

Before granting the copy of the judgment and the certificate required for enforcing any portion of a judgment by execution against the debtor's immovable property, a Small Causes Court should be satisfied that such moveable property of the debtor as is within its jurisdiction has been sold in execution.

CASE referred for the decision of the High Court by R. B. Swinton, the Judge of the Small Causes Court at Tanjore. The question was whether the Judge was authorized by Section 11 of Act XLII of 1860 (the Small Causes Courts Act) to grant a certificate to a judgment creditor, there having been no sale of the moveable property of the judgment-debtor? That section enacts that "in the execution of a decree under this Act, if after the sale of the moveable property of a judgment-creditor any portion of a judgment shall remain due, and the holder of such judgment desire to issue execution upon any immovable property belonging to the judgment-debtor, the Court, on the application of such judgment-debtor, shall grant him a copy of the judgment, and a certificate of any such remaining due under it, and, on the presentation of such copy and certificate to any Civil Court having general jurisdiction in the place in which the immovable property of the judgment-debtor is situate, such Court shall proceed to enforce such judgment according to its own rules and mode of procedure in like cases." Section 13 of Act

1863.
February 2.
R. C. No. 5
of 1863.

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

1853.
February 2.
R. C. No. 5
of 1853.

XXIII of 1861 provides that—"When a decree is passed in any suit of the nature and amount cognizable by Courts of Small Causes constituted under Act XLII of 1860, the Court passing the decree, whether such Court be a Court constituted as aforesaid or any other Court, may at the same time that it passes the decree, on the verbal application of the party in whose favor the decree is given, direct immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court passing the decree, or against the personal property of the judgment-debtor within the same limits. If the warrant be directed against the personal property of the judgment-debtor, it may be general against any personal property of the judgment-debtor wherever it may be found within the local limits of the jurisdiction of the Court, or special against any personal property belonging to the judgment-debtor within the same limits, which shall be indicated by the judgment creditor."

No counsel were instructed.

The Court delivered the following.

JUDGMENT :—The question referred by the Judge of the Court of Small Causes of Tanjore is, whether under section 11 of Act XLII of 1860, it is competent to him to issue a certificate for the execution of a decree upon the immoveable property of the defendant, before an effort has been made to realize the sum decreed by execution upon the personal property of the debtor, and before the Court is satisfied that there is no such personal property.

The Small Causes Court is a Court of limited jurisdiction which is to be determined by the precise words of the act which created it and the provisions regulating its procedure.

The Act (XXIII of 1861) which repealed section 10 of the Small Causes Courts Act (XLII of 1860), provides by section 13 for the issuing of execution by Courts of Small Causes against the person or the personal property of the judgment-debtor; and section 11 of Act XLII of 1860, which gives the right to proceed against the debtor's immoveable property, expressly makes the granting of the necessary copy

of the judgment and certificate conditional upon the moveable property being made available in execution upon the judgment. The application of the judgment-debtor is only to be were any portion of a judgment debt remains unsatisfied after the sale of the moveable property. It seems therefore clear that the Court should be satisfied that such moveable property of the judgment-debtor as is within its jurisdiction, has been sold in execution, *before* granting the copy of the judgment and the certificate required for enforcing any portion of the judgment by execution against the debtor's immoveable property.

1863.
February 2.
R. C. No. 5
of 1863.

ORIGINAL JURISDICTION. (a)

Crown Cases Reserved.

THE QUEEN on the prosecution of the MADRAS RAILWAY
COMPANY *against* MALONY.

THE QUEEN on the prosecution of the MADRAS RAILWAY
COMPANY *against* JONES.

The drunkenness of a guard or underguard in charge of a railway-train or any part thereof is an offence included in sec. 35 of Act XVIII of 1862 ; but the High Court has no jurisdiction to try a prisoner charged with such offence where he was removed from his post at a place outside the local limits, although the train thereupon proceeded with him to Madras.

THE prisoner Malony was indicted under the 27th section of the Indian Railway Act, and tried before Bittleston, J., by whom the following case was stated :

1863.
February 3.

“ James Malony was tried before me at a Criminal Session of the High Court holden on the 6th and four following days of January 1863, upon an indictment which charged that he on the 1st January at Madras, being a servant of the Madras Railway Company, was in a state of intoxication whilst actually employed upon the Madras Railway in discharge of his duty as a guard in a passengers' train, such duty being one, the negligent performance of which would be likely to endanger the safety of persons travelling on such railway.

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