

1863.  
February 2.  
S. A. No. 41.  
of 1862.

*parte.* Then under section 119 he might have applied within thirty days to set aside such decree if he had any sufficient cause to assign. He did not do so. But it is said that inasmuch as he appealed to the Civil Court, and his appeal was then entertained, therefore we ought to admit a special appeal from the decree of the Civil Judge. But the Civil Judge's assumption of jurisdiction is no reason why we should assume it if we see, as we do here, that the party has no legal right to appeal.

HOLLOWAY, J.—This is a special appeal from a matter *coram non iudice*. The Civil Judge had no jurisdiction to entertain the appeal. He was not hearing it as Civil Judge. The present appeal must be dismissed.

*Appeal dismissed with costs.*

APPELLATE JURISDICTION. (a)

*Referred Case No 4 of 1863.*

RĀMASVAMI CHETTI and others *against* PĀPPĀ REDDI.

The security bond executed by a third party to the *ābkāri* renter is not exempt from stamp-duty.

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R. C. No. 4.  
of 1863.

CASE referred by R. J. Melville, the Acting Judge of the Small Causes Court at Chittur, for the decision of the High Court.

No counsel were instructed.

The facts sufficiently appear from the following

JUDGMENT :—The question is whether the security bond executed by a third party to the *ābkāri* renter is exempt from stamp duty.

The Regulation I of 1820 has no reference to such an instrument, and it does not seem to us to fall within any of the exemptions as respects bonds in Schedule A, Act XXXVI of 1860, which upon the case as stated, we take to be the Stamp Act in force when the bond was given.

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

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.

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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

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