

APPELLATE JURISDICTION (a)

Referred Case No. 6 of 1862.

SABHÁPATI MUDALI *against* MUTTUSVÁMI MUDALI and
others.

An order from the High Court is necessary to enable a Court of Small Causes to entertain a suit against several obligors, one of whom, at the time of filing the plaint, is neither resident, nor personally working for gain within the limits of its jurisdiction.

Such order should be applied for after the reception of the plaint, upon a statement of the circumstances of the particular case.

See 21 of Act XLII of 1860 is to be given the same operation as if Act XXIII of 1861 had formed part of Act VIII of 1859 when it became law.

THIS was a case referred for the opinion of the High Court by F. C. Carr, Acting Judge of the Court of Small Causes of Cuddalore. 1862.
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of 1861.

The facts sufficiently appear from the following judgment, which was delivered by

SCOTLAND C. J. :—This is a case stated for the decision of the High Court by the Acting Judge of the Court of Small Causes at Cuddalore under section XIII, Act XLII of 1860 ; and the question submitted is, whether in a suit for the recovery of principal and interest due upon a bond, against three defendants (the obligors), one of whom at the time of the filing of the plaint was resident out of the jurisdiction of the Court, in order of the High Court is necessary and ought to be granted, under section IV Act XXIII of 1861, to enable the Court of Small Causes to proceed to hear and determine the suit ?

Looking to the provision as regards jurisdiction contained in section IV of the Act establishing Courts of Small Causes (Act XLII of 1860), it is clear that unless the 4th section of Act XXIII of 1861 applies, the Cuddalore Court of Small Causes had no jurisdiction even to entertain the suit as against the defendant not resident, nor (as it is assumed) personally working for gain, within the limits of its jurisdiction.

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

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With regard to the question whether the latter Act applies, it is to be observed that the Courts of Small Causes exercise a limited and, with some exceptions, an exclusive civil jurisdiction, and by section XXI of Act XLII of 1860, which contains no provision applicable to this case, it is expressly enacted that, except as thereinbefore provided, "the provisions of Act VIII of 1859 shall be applicable to cases cognizable under this Act, in so far as the same may be applicable and necessary," and by the 44th section of Act XXIII of 1861 it is enacted that "this Act shall be read and taken as part of Act VIII of 1859."

Giving effect to the latter enactment, this Court must give the same operation to section XXI of Act XLII of 1860, as it would have done if the provisions of Act XXIII of 1861 had actually formed a part of Act VIII of 1859 at the time when it became law; and so construing the section, the remaining question is, whether the provision in section IV of Act XXIII of 1861 is to be considered as "applicable and necessary" to this case? We are of opinion that it is. The intention of the section is to provide against the expense and inconvenience of several suits in respect of the same cause of action; and it appears to us to be in all respects just as applicable and necessary to suits of this nature in Courts of Small Causes, as to suits in any of the Courts of Civil jurisdiction, to which the Code of Civil Procedure applies.

The case, therefore we think, is one in which the order necessary to give jurisdiction to hear and decide the suit should issue under section IV Act XXIII of 1861. As the Court of Small Causes is not subordinate to the District Court, but is subject to the control of the High Court, such order must issue from the High Court; and it will go to the court in which the suit is now pending, there being nothing to shew that the suit can more properly be tried by any other competent Court.

The effect of this decision is to require, for the future, in all similar cases, an application to be made, after the reception of the plaint, for the requisite order, upon a statement of the circumstances of the particular case.