

Appellate Jurisdiction (a)*Referred Case No. 9 of 1868.*SIVA RA'MA PILLAI.....*Plaintiff.*TURNBULL.....*Defendant.*

Clause 2, Sec. I of Act XIV of 1859 applies only to suits for wages brought by a servant against the person liable as the master in whose service he had been employed, and the section does not apply to a suit brought by one Government servant against another for the recovery of a sum of public money received by the defendant as a disbursement on account of the wages of the plaintiff, to whom the defendant was legally bound to pay it over.

CASE referred for the opinion of the High Court by J. R. Daniel, the Judge of the Court of Small Causes at Madura.

1868.
April 22.
R. C. No. 9
of 1868.

No Counsel were instructed.

The Court delivered the following

JUDGMENT:—From the case as amended we understand the facts to be that the plaintiff held his post subordinate to the defendant, not under an independent contract of service with the defendant individually as principal, but by the official appointment of the defendant or another superior officer of the Forest Department on behalf of the Government. That the plaintiff's duties were those of a Head Watchman or Peon: and that the suit was for an amount of public money actually received by the defendant as a disbursement on account of the plaintiff's wages.

On those facts we are of opinion that Clause 2, Section I of the Limitation Act is not applicable to the suit; not however on the ground that the plaintiff was not of either of the classes designated in the Clause, for the designation "servants" relates to persons whose personal services are employed in capacities similar to those of unskilled laborers, which we think was clearly the position of the plaintiff, and the Act makes no distinction between "servants, artisans and laborers" employed in the public service and those in any other employment.

Our opinion rests on the ground that the provision in the Clause was intended to apply only to suits for wages

1868.
April 22.
R. C. No. 9
of 1868.

brought by a servant against the person liable as the master in whose service he had been employed, and the present is not such a suit. The plaintiff's cause of action is the withholding of the money which the defendant had received from the plaintiff's employers, the Government, for the purpose of discharging the wages due, and which he was thereupon legally and justly bound to pay over to the plaintiff. The suit, therefore, is to enforce the implied undertaking to pay over the money to the plaintiff which arose on the receipt of the money by the defendant. On this ground we give our opinion that the suit is not barred by Clause 2, Section I of Act XIV of 1859.

Appellate Jurisdiction (a)

Regular Appeal No. 75 of 1867.

GULAM HUSSAIN SAIB SAIYAD.....*Appellant.*

AJI AJAM TADALLAH SAIB KURAISHI.....*Respondent.*

Regular Appeal No. 25 of 1868.

AJI AJAM TADALLAH SAIB KURAISHI..... *Appellant.*

GULAM HUSSAIN SAIB SAIYAD..... *Respondent.*

Certain lands, choultries, and movable property had been, by instrument in writing, given to the brother of the donor and his heirs for the purpose, in perpetuity, of keeping in repair the choultries and affording strangers the charities of shelter and, if circumstances permitted, food also, as well as for supplying the wants of the donees—with clauses restraining alienation by them.

Held, that the instrument effected a transfer of the property to the donees subject to the trust of applying the profits of the lands &c., in perpetuity to certain charitable purposes and was not revocable whether the transaction be viewed as a pure trust or as a gift.

The power of revoking gifts is given under the Muhammadan law only in the case of private gifts for the donee's own use, no relationship existing between the donor and donee.

The rule of Muhammadan law that a Muttawalee, or Superintendent of an endowment is removable for mismanagement does not apply to the case of a trustee who has a hereditary proprietary right vested in him.

It is essential for the exercise by the donor of the power of removing a Superintendent that such power be specially reserved at the time of the endowment.

1868.
April 22.
R. A. No. 75
of 1867, and
No. 25 of
1868.

THESE were Regular Appeals from the decree of A. W. Phillips, the Civil Judge of Chingleput, in Original Suit No. 4 of 1863.

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