

order of the 23rd February 1869 is set aside, and the Civil Court is directed to proceed to attach and sell the village of Vella in due course. The costs of this application must be added to the amount decreed and paid out of the estate.

1870.
March 25.
C. P. No. 165
of 1869.

Appeal allowed.

Appellate Jurisdiction. (a)

Referred Case No. 51 of 1869.

P. AHOBALASOO CHETTY

against

VENKATAKRISTNAMMA and another.

A Small Cause Court can sell the undivided right, title, and interest of a deceased debtor, to which the defendants succeeded, in the moveable property in satisfaction of a decree obtained against the defendants without infringing the 2nd proviso of Section 6 of Act XI of 1865. Until the judgment-creditor has exhausted that mode of proceeding, he is not entitled to proceed against the debtor's immoveable property under Section 20 of the Act.

THE following was a case referred for the opinion of the High Court by H. P. Gordon, the Acting Judge of the Court of Small Causes at Vellore in suit No. 1040 of 1868.

1870.
March 28.
R. C. No. 51
of 1869.

This is an application under Section 20, Act XI of 1865 for a certificate of the amount due under the judgment in Suit No. 1040 of 1868 to enable the judgment-creditor to proceed against the immoveable property of the judgment-debtors.

On the 11th December 1868 the judgment-creditor obtained a decree of this Court against defendants as guardians of the minor sons of one Ramannah deceased, which rendered the one-third share in certain undivided family property which would have accrued to the said Ramannah, on a division during his life-time, liable for the satisfaction of the said decree.

The application sets forth that this Court has no power to execute the decree in question, and plaintiff therefore applies to be allowed to proceed against the share of the deceased Ramannah in the family-immoveable property in the Court of the District Munsif.

Section 20, Act XI of 1865 provides for the issue of such a certificate as is applied for, only after the sale of the move-

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

1870.
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able property of the judgment-debtor. No attempt has been made to attach the moveable property of the defendants.

I am of opinion that as stated in the application, this Court has no power to enforce the decree against the share of the deceased Ramannah in the moveable property of the family, for it is apparently precluded by Section 6 of Act XI of 1865 from entertaining a suit for a share in undivided moveable property, and without virtually awarding such a share the Court could not enforce its decree.

If then the moveable property of the judgment-debtors be not open to attachment, apportionment, and sale by this Court, I think that the Court would be justified in granting a certificate to the judgment-creditor to enable him to proceed against the immoveable property.

The hearing of the application has been adjourned pending the decision of the High Court of the following questions :—

I. Can a Court of Small Causes attach and sell moveable property, to a share of which only the judgment-debtor is admitted to be entitled, and award to the judgment-creditor such a proportion of the proceeds of the sale as may represent the value of the judgment-debtor's interest therein ?

II. If a Court of Small Causes cannot do so, in what way can it enforce its decree against the joint moveable property of a judgment-debtor and others ?

III. If a Court of Small Causes cannot attach, sell, and apportion the proceeds of the joint moveable property of a judgment-debtor and others, is it justified in granting a certificate under Section 20, Act XI of 1865, to enable the judgment-creditor to proceed against the immoveable property of the judgment-debtor ?

No counsel were instructed.

The Court delivered the following

JUDGMENT :—We understand that the decree in the suit is for the payment of the debt due by the minor's deceased father. In satisfaction of that decree the Court of Small Causes, can, we think, proclaim for sale and sell the undivided right, title and interest of the deceased to which the defen.

dants succeeded, in the moveable property, without infringing the 2nd proviso of Section 6 of Act XI of 1865,(a) and until the judgment-creditor has exhausted that mode of proceeding to obtain satisfaction, he is not entitled to proceed against the debtor's immoveable property under Section 20 of the same Act.

1870.
March 28.
R. C. No. 51
of 1869.

Original Jurisdiction. (b)

REGINA v. DONOGHUE.

The prisoner was convicted at a Criminal Sessions of the High Court for supplying liquor without a license, an act made punishable by Madras Act No. I of 1866.

Held, that the High Court had no jurisdiction inasmuch as the Act which creates the offence declares it to be punishable by a Magistrate.

Holloway, J. dissented from the judgment.

Quere, Whether the Local Legislature has power to enact that a European British Subject shall be punishable by a Magistrate on summary conviction for an offence newly created by the Local Legislature.

CASE stated by Holloway, J :—

1870.
March 30.

John Donoghue, a European British Subject, was tried before me for supplying liquor without a license, an act

(a) Section 6 of Act XI of 1865 is as follows :—

The following are the suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages when the debt, damage, or demand does not exceed in amount or value the sum of five hundred Rupees whether on balance of account or otherwise : Provided that no action shall lie in any such Court,

(1.) On a balance of partnership account, unless the balance shall have been struck by the parties or their agents.

(2.) For a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will.

(3.) For the recovery of damages on account of an alleged personal injury, unless actual pecuniary damage shall have resulted from the injury.

(4.) For any claim for the rent of land or other claim for which a suit may now be brought before a Revenue Officer unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears.

(b) Present ; Scotland, C. J., Bittleston and Holloway. JJ