

in the matter "to which the award relates," and the Court is required to give notice to all the parties to the arbitration other than the applicant calling upon them to show cause why the award should not be filed for the purpose of being proceeded upon. From this it appears quite clear to us that the Court applied to must be one having jurisdiction in respect to the *whole* matter. If the award is ordered to be filed, judgment is to be given according to the award and execution may then be taken out of the decree. It never could have been intended that the same award might be proceeded upon under Chapter VI of the Code in several different Courts. If the liabilities of the several parties to the award are several and distinct, the Court having jurisdiction over the whole matter will in its decree provide for the distinct rights and liabilities of the parties as in any ordinary case involving separate liabilities. It is clear that the whole matter of the award in the present instance considerably exceeds the pecuniary limit of the jurisdiction of the Court of Small Causes. This affords a sufficient answer to the several questions submitted.

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December 20.
R. C. No. 54
1869.

Appellate Jurisdiction. (a)

Special Appeal No. 209 of 1869.

RAJARAM LALA.....	{	<i>Special Appellant.</i>
		<i>2nd (Plaintiff.)</i>
KALIYAPPEN.....	{	<i>Special Respondent</i>
		<i>(Defendant.)</i>

A Collector has no power to set aside the decision of a Head Assistant Collector when the latter is exercising the powers conferred on a Collector by Madras Act VIII of 1865.

THIS was a special appeal against the decree of the Civil Court of Salem in Regular Appeal No. 281 of 1868, reversing the decision of the Head Assistant Collector of Salem in Original Suit No. 29 of 1867.

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of 1869.

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

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Srinivasa Chary, for the appellant.

Rama Row, for the respondent.

The Court delivered the following

JUDGMENT :—In this case the plaintiffs are the actual possessors of the Valaymbat Jaghire and as such brought a suit before the Head Assistant Collector under the Madras Rent Act VIII of 1865 to compel the defendant to accept a puttah and to execute a muchilka for the land occupied by him being part of the plaintiff's Jaghire. The Head Assistant Collector on 2nd July 1867 dismissed the suit, but the Collector, exercising his general powers of revision under Section III, Regulation VII of 1828, on the 31st August 1868, by a letter, set aside the Head Assistant Collector's decision, and directed him to re-investigate the case upon the merits. The Head Assistant Collector accordingly re-heard the case, and finding that the puttah tendered was a proper one decreed that the defendant should accept the same and execute a muchilka in exchange. The defendant then appealed to the Civil Court and the late Civil Judge reversed the decision of the Head Assistant Collector and dismissed the suit on the ground (first) that the Collector had no power to interfere with the Head Assistant Collector's decision, and the latter no power to review his former decision; and (secondly) that the plaintiffs were not in legal possession of the Jaghire. As to the second ground of objection we are of opinion that the view of the late Civil Judge was erroneous. The plaintiffs were in actual possession of the Jaghire and obtained such possession under the process of the ordinary Civil Courts which is still in force, and we are clearly of opinion that a rightful possession of this nature would give a good *locus standi* in the Revenue Court such as to justify and require the Collector to proceed to compel the tenants occupying lands to accept proper puttahs for the same. It is sufficient to found the jurisdiction of the Collector that the plaintiff is the landlord in peaceable possession and proved *primâ facie* to be clothed with the legal right to the rents of the estate, and we see no ground for supposing that the Legislature intended that it should be open to the tenant to set up against such a plaintiff the title of a third party out of possession, a course

which is not reasonably required for the protection of the tenant's interests and would be likely to result in much fraud.

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The other ground of objection taken by the Civil Court is, we think, well founded. Section III of Regulation VII of 1828 is left unrepealed by Madras Act VIII of 1865, and Clause 3 of the Section gives to the Collector the fullest powers of control and revision over the proceedings of his subordinates. But Section 76 of Madras Act VIII of 1865 enacts that in proceedings under the Act no judgment of a Collector shall be open to revision otherwise than by appeal to the Zillah Court, and applying to the term "Collector" the definition of it given in Section I of the Act, this includes the judgment of a Head Assistant or other Subordinate Collector. It prohibits therefore the judgment of a Head Assistant Collector being revised otherwise than by an appeal to the Civil Court. To this extent the powers given by the Regulation appear to be restricted by the words of Section 76 of the Act, and as we must suppose that the provisions of the Regulation were present to the mind of the Legislature when framing the Act. The term *revision* seems to have been purposely used with reference to the general powers of control and revision given by the Regulation; for we need scarcely add that those general powers save as thus expressly restricted still remain in full force, and it would not be difficult to suggest how they might be applied in a variety of ways to the proceedings of Subordinate Collectors under this very Act.

The question remains whether, though the Collector had no power to revise and set aside the judgment of the Head Assistant Collector, the subsequent judgment of the Head Assistant may not be regarded as a review of his former judgment. Section 76 contains an exception as to the revision of judgment in favor of cases within Section 58 of the Act, but that Section is limited to judgments in default or *ex-parte* and would therefore not include the present case. Ordinarily where a Court has passed judgment in a suit, it has not the power to review and alter its first judgment upon the merits, unless such power has been expressly conferred upon the Court. As observed in the judgment reported

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in 4, *Madras High Court Reports*, 253, Madras Act VIII of 1865 lays down all the procedure to be observed in a suit before a Collector and with the exception of Section 58 there is no provision enabling a Collector to review his judgment, and the restrictive words of Section 76 itself are wide enough to include a prohibition of review of judgment otherwise than under Section 58.

For these reasons we confirm the decree of the Lower Appellate Court and dismiss this special appeal with costs.

Appeal dismissed.

Appellate Jurisdiction. (a)

Referred Case No. 56 of 1869.

S. VENKATAPPAH *against* D. PAPAMMAH and another.

A Civil Court has no power to bind witnesses by recognizances to attend to give evidence on a future day.

A verbal order of the Court to witnesses requiring them to attend on a future day would not justify the issuing of a warrant for the apprehension of such witnesses in case they failed to attend in obedience to such verbal order.

1870.
January 4.
R. C. No. 56
of 1869.

CASE referred for the opinion of the High Court by P. Teroomul Row, the District Munsif of Purgly, Zillah Bellary, in Small Cause Suit No. 351 of 1869.

The case stated was as follows :—

This case came on for hearing, but was adjourned for further hearing in consequence of the absence of some of the witnesses for plaintiff. The plaintiff's Vakil then requested that as he was prepared to produce any amount that was necessary for the expenses of the witnesses (who now appeared) to attend again, the Court may bind them over and take recognizances from them to appear again on the day on which the case would be tried. I declined to comply with the request in the absence of express legal sanction to the procedure (subject to the opinion of the Honorable Judges of the High Court as to whether such refusal is right) and discharged the witnesses, verbally intimating to them that their attendance to give evidence will be required again on the 6th proximo.

(a) Present ; Scotland, C. J., and Collett, J.