

ORIGINAL CIVIL.

Before Mr. Justice Wilson.

1890

Sept. 23.

IN THE MATTER OF THE PROPOSED SUIT OF WATTS & Co. v. BLACKETT.

Small Cause Court, Presidency Towns—Jurisdiction—Small Cause Court Presidency Towns Act (XV of 1882), s. 18—Army Act, 1881 (44 and 45 Vic., c. 58), s. 151—Army (Annual) Act, 1888 (51 Vic., c. 4.), s. 7—Leave to sue.

The jurisdiction given to Presidency Small Cause Courts by Act XV of 1882, s. 18, is not affected by 51 Vic., c. 4, s. 7.

THIS was an order under s. 622 of the Code of Civil Procedure, sending for the record of an application made before the Chief Judge of the Calcutta Court of Small Causes.

The facts of the case were as follows:—

Messrs. Watts & Co., saddlers, applied to the Chief Judge of the Small Cause Court for leave to bring a suit in that Court against Captain Blackett, an officer in the Rifle Brigade, who was then stationed at Bareilly, to recover on a promissory note for goods sold and delivered. The Chief Judge refused leave on the ground that section 151 of the Army Act of 1881, as amended by section 7 of the Army (Annual) Act of 1888, excluded his jurisdiction. He considered that the amendment contained in section 7 of the Army Act of 1888 was introduced in consequence of the decision of the Court in *Wallis v. Taylor* (1), and was intended to deprive the Small Cause Court of the jurisdiction which, when *Wallis v. Taylor* was decided, it was supposed to have, but which it was never in reality intended to possess. The learned Judge accordingly held that he could not give leave to sue, as he had not jurisdiction to try the suit.

The applicants then moved the High Court under section 622 of the Code of Civil Procedure for an order directing the Chief Judge of the Small Cause Court to grant them leave to sue under section 18 of Act XV of 1882.

(1) I. L. R., 13 Calc., 37.

Mr. *O'Keenly* for the applicants.

The following judgment was delivered by

WILSON, J.—The point which I have to decide is whether the Calcutta Court of Small Causes can give leave to bring, and, after giving such leave, has jurisdiction to try, a suit against a military officer, not resident within the local limits of its jurisdiction, in respect of a cause of action which has arisen wholly or in part within those limits. Section 18 of the Presidency Small Cause Courts Act, 1832, clearly gives such jurisdiction, in the case of military officers as well as others, unless its effect is restrained by other legislation. The learned Chief Judge has held that section 7 of the Army Act, 1888, 51 Victoria, ch. 4, excludes the jurisdiction. A similar question arose under the Army Act, 1881, in *Wallis v. Taylor* (1). Section 151 of that Act said: “In India all actions of debt and personal actions against persons subject to military law, other than soldiers of the regular forces, within the jurisdiction of any Court of Small Causes, shall be cognisable by such Court to the extent of its powers.” It was held that there was nothing in these words to exclude the jurisdiction of the Calcutta Court of Small Causes in a case similar to the present. The Army Act, 1888, section 7, recites the words in the Act of 1881 just referred to, and recites that “doubts have arisen as to whether the words ‘within the jurisdiction of any Court’ refer to persons resident within the jurisdiction;” and it proceeds to remove those doubts by altering the language of section 151 so as to make it run thus:—“In India all actions of debt and personal actions against persons subject to military law, other than soldiers of the regular forces, resident within the local jurisdiction of any Court of Small Causes, shall be cognisable by such Court to the extent of its powers.” This alteration of the language imposes stricter limits upon the jurisdiction based upon residence which the section purports to give; but I do not see how the words can be construed as taking away the other kind of jurisdiction, based upon other considerations, which the Small Cause Court Act gives. And the question, of course, is not whether the section, as altered, gives the jurisdiction, but whether it takes it away. The reasons for the decision in *Wallis v. Taylor* apply, in my opinion, as strongly to the new

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enactment as to the old. The result is that the matter will go back to the learned Chief Judge, who will exercise his discretion as to granting the leave asked for. In exercising that discretion it will be well to bear in mind the case of *Collett v. Armstrong* (1) as well as *Wallis v. Taylor*.

Attorneys for the applicants: Messrs. Sanderson & Co.

H. L. B.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Hill.

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 Sept. 16. RAM CHURN SING AND OTHERS (PLAINTIFFS) v. DHATURI SING AND OTHERS (DEFENDANTS). *

Sonthal Pergunnahs Settlement Regulation (III of 1872), ss. 11, 25—Suit regarding matter decided by Settlement Court—Settlement Officer, finding of—Jurisdiction of Civil Court—Right of suit—Suit to set aside settlement and for possession.

Where a suit was brought to establish—by avoiding the instrument under which he held—that the defendant was not a tenant of the lands in dispute, and to oust him from possession, and he had been recorded in the record of rights made by the Settlement Officer as a tenant of such lands, *held* that the suit was “one regarding a matter decided by a Settlement Court” within the meaning of s. 11 of the Sonthal Pergunnahs Settlement Regulation (III of 1872), and was therefore not maintainable.

The introductory words of clause 4 of s. 25 of the Regulation which impose a personal limitation on the jurisdiction of the Civil Courts apply to suits of all the three classes to which the clause relates; so that the bar to the jurisdiction can take effect on a suit in the third of the three classes only when it is both “suit to contest the finding or record of the Settlement Officer,” and involves also the determination of “the rights of zemindars or other proprietors as between themselves.”

The facts necessary for this report are sufficiently stated in the judgment of the High Court.

* Appeal from appellate decree No. 242 of 1889, against the decree of R. Carstairs, Esquire, Deputy Commissioner of the Sonthal Pergunnahs, dated the 11th of December 1888, affirming the decree of F. Grant, Esquire, Sub-divisional Officer of Godda, dated 16th of April 1888.

(1) I. L. R., 14 Calc., 526.