

In the High Court of Judicature, Bombay.

Wednesday, the 28th day of September, 1864.

SPECIAL APPEAL No. 529 of 1864.

Hemraj Moorar Thakur of
the Korkun District

Appellant,

(Original Defendant.)

versus

Balaji Govind Achurwil de-
ceased his heir Pandorung
Bulal Achurwil of the
Korkun District

Respondent,

(Original Plaintiff)

Rs. 40 - " - " -

The claim in the Original Suit was to have a gutter ~~and~~ closed
and a projecting roof removed, Plaintiff alleging
that they were a nuisance.

In Appeal No. 639 of 1863 the Assist. Judge
of the District of the Korkun, at Tarana confirmed
the Decree of the Munsif of Korkun who had awarded that part
of Plaintiff's claim which related to the gutter.

A Special Appeal was preferred in the High Court on the grounds that (1) a
substantial error in law has occurred in
the investigation of the case which has
produced

produced an error in the decision of the case on its merits in that the agreement N^o 31 was made with the Respondent regarding the water falling from the eaves of the Sopa (building) and therefore there should necessarily be a gutter for the passage of the water of the said Sopa. Therefore it was contrary to the said agreement to have awarded the claim for closing the gutter, that (2) the Respondent is not competent to close the gutter but he might sue the Appellant to prevent him from allowing any dirt &c to pass through the gutter and moreover if the Appellant make a drain window &c in his wall the Respondent cannot close the same whereas the claim was allowed, that (3) there is no evidence in the case to shew that dirt &c was allowed to be passed through the gutter [nor is any finding recorded on the point therefore it was an error to have ordered the closing of the gutter] and that

(4) the evidence which was not taken was tendered to shew that the Respondent allowed the gutter to be made and that he was present when it was made and therefore the said evidence should have been taken even if it did not relate to the said agreement.

The Court confirms the Decree of the Assistant Judge with costs.

Abraham Forbes.

A. M. Anderson

MEMORANDUM OF COSTS incurred in Special Appeal No. 529.

of 186 4. against the decision of the *Appt Judge* of the District of *Konkan* and disposed of on the *28th Sep: 1864* by *Confirming the same with costs*.

BY THE APPELLANT—

In the District.

In the <i>Moonsiff's Court</i>	12 10	✓		
In the <i>Appt Judge's Court</i>	7 3 2	✓		
			19 13 2	

In this Court.

Stamp for Memorandum of Special Appeal	4	✓		
Stamps for copies of Decree and Judgment	1 8	✓		
Stamp for Vukeelutnama	2	✓		
Batta for Process and Postage	1 2	✓		
Sectioner's Fee	" 15	✓		
Vukeel's Fee	1 3 2	✓		
			10 12 2	✓
			Rupees.....	30 9 4 ✓

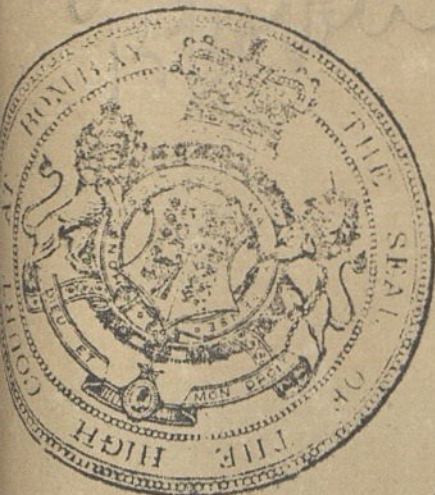
BY THE RESPONDENT.

In the District.

In the <i>Moonsiff's Court</i>	19 2	✓		
In the <i>Appt Judge's Court</i>	2 3 2	✓		
			21 5 2	✓

In this Court.

Stamp for Vukeelutnama	2	✓		
Vukeel's Fee	1 3 2	✓		
			3 3 2	✓
			Rupees.....	24 8 4 ✓



Alidash
For Sealer

Alidash
For Acting Registrar

The 28th day of September 1864