

In the High Court of Judicature, Bombay.

For day, the 7th day of October 1864

SPECIAL APPEAL No. 622 of 1864

Harzi Mia Wulud Nizam Ali
Hoari of the Konkan District.

Appellant

(Original Plaintiff)

versus

Ali Wulud Fukeer Pokur and
Rowjee Gunesh and Goolam
Mohidden Wulud Nizam Ali
and Abdul Rahimah Wulud
Goolam Burdi of the Konkan
District

Respondents

(Original Defendants)

Rs. 800

The claim in the Original Suit was to recover an advance of Rs 500 with Rs 37.8 interest, and Rs 262.8 as compensation on account of partnership, of which Dept. Ali refused to produce the account.

In Appeal No. 34 of 1864 the Assist^t. Judge of the District of the Konkan at Terma confirmed the Decree of the Juff. of Bhandi who had thrown out the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) the decision of the assistant judge is contrary to Law in that

(a) In that the court below has not decided

decided either that the partnership
has resulted in loss or in profit,
that (2) there has been a substantial
error in law in the procedure of the
case which has produced error in
the decision of the case upon its merits
in that.

(a) The onus of proving the accounts
and the responsibility of their
appearing untrustworthy have
been cast upon the Appellant,
whereas the opposite parties had
charge of them.

(b) The Court below did not
apply to this case the maxim of
law that every thing is presumed
against the wrong doer.

The Court finds that, Aji having been under
the deed of partnership, the appointed Custodian
of the books, he would be bound to account to
Plaintiff for any profits that might be shown
to have been made by the said books and he could
not plead that they were untrustworthy, unless
he could at the same time show that there had
been fraud in the preparation of the books to which
Plaintiff had been a party.

The Assist. Judge decided that in consequence
of the unsatisfactory state of the books, the

Plaintiff was bound to show what profits had resulted from the business and, because he had not done so, decreed against him.

The Court thinks that the Assist.^{nt} Judge was in error on that point, and reverses his decree, and remands the case that the Assist.^{nt} Judge may determine whether the Defendant Celi has proved fraud in the preparation of the books to which Plaintiff was a party, and may make a decree in accordance with his decision on this issue.

Costs to follow the final decision.

H. P. Fisher

A. W. Marden

MEMORANDUM OF COSTS incurred in Special Appeal No. 622
of 1864. against the decision of the *Spitt* Judge --- of the
District of *the Konthu* and disposed of on the 7th Oct^r 1864
by *remanding the same for retrial*

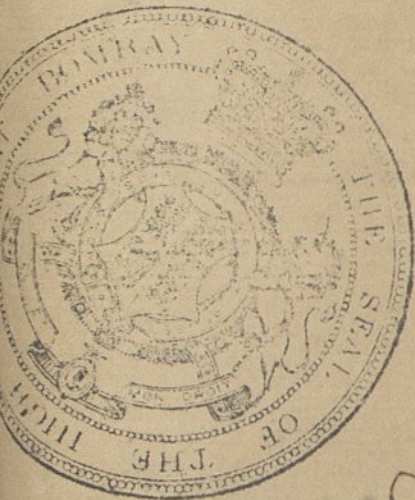
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3	00					
Stamp for Vukeelutnama	2	00					
Batta for Process and Postage	5	10					
Sectioner's Fee	2	40					
Vukeel's Fee one-fourth	6	00					
						18	14
						Rupees ...	18 14

BY THE RESPONDENT—

Stamp for Vukeelutnama	2	00					
Vukeel's Fee one-fourth	6	00					
							8 00
						Rupees....	8 00



And
And
For Sealer
The 7 day of October 1864.

And
For Acting Registrar

Issued a Certificate on Her
Majesty's Bank of Bombay for the
refund of Rupees (32) Thirty two
being the value of Stamp used
for Special Appeal in this case

Dated this 14th day of October
1864

[Signature]
Acting
Assistant Registrar

(98)