

In the High Court of Judicature, Bombay.

Tues day, the 14th day of February 1865.

SPECIAL APPEAL No. 877 — or 1864.

Lakshmun Krishn Kotat
Kur of the Honble Dis-
trict (Original Defendant)

Appellant

versus

Jeeva Shastri of the
Honble District
(Original Plaintiff)

Respondent

Rs. 123-0-0

The claim in the Original Suit was to recover portion of a garden, to have Plaintiff's title established to the whole of the said garden, and to recover damages for the felling of certain trees.

In Appeal No. 238 of 1864, the Judge of the District of the Deccan at ... who awarded the claim with Rs 115 as damages, by reducing the amount of damages to Rs 29.

A Special Appeal was preferred in the High Court on the grounds that the decision of the District Judge is contrary to

to

to law in that,

(a) The claim is barred by the law of limitation.

(b) The Plaintiff should have proved the amount of the damage. The onus has been wrongly cast upon the Defendant in that he was required to show that the amount claimed was excessive.

The Court finds that the lower Appellate Court substantially held that the land in dispute was included within the boundaries of the enclosed piece of land sold to Plaintiff, a fact which is now admitted by defendant's counsel in its Appeal, and that the said land was unoccupied until Defendant commenced to cultivate it about a year before the institution of this suit, and that therefore the lower Court's decision on the question of limitation was correct.

On the second point the Court holds that Plaintiff was bound to prove in the first place the value of the trees destroyed; and that in the absence of this proof the fact that the defendant did not show that the value at which the trees were estimated ^{in the plaint} was excessive was no sufficient ground for an award against him, as there is no evidence on the record in regard to the value of the trees, the Court considers Plaintiff only entitled to a decree for nominal damages.

The Court therefore modifies the decree of the District

District Judge and awards to the Plaintiff one (1) copy
only as nominal damages, and the Court confirms
the remainder of the Judge's decree.

Costs in both the lower courts to be borne by Defendant
(Appellant) costs in Special Appeal to be borne
proportionally to the amount claimed and dis-
allowed.

A. Hinloch Forbes.
Att. by Forbes

MEMORANDUM OF COSTS incurred in Special Appeal No. 877

of 186 4 against the decision of the Judge _____ of the District of the *Northward* and disposed of on the *14th February 1865* by *me desiring the same*.

BY THE APPELLANT—

IN THE DISTRICT.

In the <i>Moonieff's Court</i>	13. 51	✓		
In the <i>Judge's Court</i>	15. 41	✓		
			28	92

IN THIS COURT.

Stamp for Memorandum of Special Appeal	8	✓		
Stamps for copies of Decree and Judgment	3	✓		
Stamp for Vukalutnama	2	✓		
Stamp of an application to enter the name of the Appellant's heir		✓		
Batta for Process and Postage	1. 8	✓		
Sectioner's Fee	2. 19	✓		
Vukeel's Fee	3. 11	✓	20	410
			Rupees....	48 14

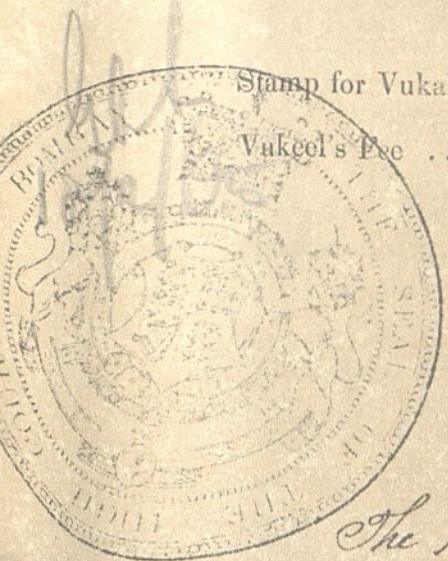
BY THE RESPONDENT—

IN THE DISTRICT.

In the <i>Moonieff's Court</i>	17. 15	✓		
In the <i>Judge's Court</i>	4. 11	✓		
			22	102

IN THIS COURT.

Stamp for Vukalutnama	2	✓		
Vukeel's Fee	3. 11	✓	5	11
			Rupees....	28 53



W. J. West
R. West
 The 14th day of February 1865. Registrar

~~Handwritten text in Odia script, consisting of approximately 12 lines of text that has been crossed out with horizontal lines.~~

A true translation
Thandera Chandrai
Trans.

17/2/65.

