

Appeal under Sec. 36 of Act VIII. of 1859.

VENKAT SHRI NIVA'S *Appellant.*
 J. F. ARMSTRONG *Respondent.*

Act XVIII. of 1850 does not protect judicial officers from being sued in a civil court, except in respect of acts done by them in good faith in the discharge of their judicial functions.

When a plaint is presented to a judge against such an officer, which complains of a wrongful act on the part of that officer, the judge is bound to receive the plaint, and to leave it to the defendant to plead Act XVIII. of 1850.

THIS was an appeal, under Sec. 36 of Act VIII. of 1859, against an order of the District Judge of Kaládgi, rejecting a plaint under Sec. 32 of Act VIII. of 1859 as not showing any cause of action on the face of it.

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The rejected plaint contained, among others, the following allegations :—(1) That the appellant was legally empowered by several persons, who had been convicted and fined by the second class subordinate magistrate of Hungund, to appeal to the respondent, who was the magistrate of Kaládgi, against the conviction. (2) That on his appearing accordingly before the respondent, the latter, without any reason whatever, prevented his conducting the appeal. (3) That in consequence thereof he suffered damage, inasmuch as he had to refund to his clients the fee he had received from them; and was prevented from earning the reward they had stipulated to give him, in the event of the said convictions being reversed. (4) That Act XVIII. of 1850. would not protect the defendant in this case: inasmuch as what he had done was done by him intentionally and wrongfully, and damage had resulted therefrom to the plaintiff.

The District Judge held that, as the act complained of appeared to have been done by the defendant in the discharge of his judicial functions as a magistrate, he was protected by

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Act XVIII. of 1850 from being sued in respect of it ; and he accordingly rejected the plaint.

Nánábhái Harádas for the appellant.—The plaint disclosed the necessary ingredients of a tort : the existence of a right in the plaintiff to conduct the appeal ; and the wrongful infringement of that right by the defendant. The Act referred to by the District Judge does not go the length of protecting judicial officers from the consequences of wrongful acts done intentionally.

Dhirájlál Matháradás for the respondent contended that the defendant was protected by the Act.

WESTROPP, J.:—The plaint is not suicidal. It does not show that the magistrate in good faith believed he had jurisdiction to do the act complained of.

There may be circumstances, now undisclosed, which would show that he is protected by Act XVIII. of 1850 ; but it is for him to put them forward by way of defence and to prove them at the trial. *Primá facie* the act complained of is a wrongful act. We express no opinion at present, whether the case may or may not come under the protection of the Act ; but we think that the District Judge ought to have admitted the plaint.

We, therefore, reverse his order and direct that the plaint be received. Costs to follow the final decision.

TUCKER and WARDEN, JJ., concurred.
