

*Referred Case.*

ALLA'RAKIA' ALI' V. GEACH.

*Debtor and Creditor—Substitution.*

The defendant being indebted to the plaintiff in the sum of Rs. 574-5-0, the amount of plaintiff's bill against the ship "Compta," of which the defendant was master, they both went to the office of the ship's dubásh in Bombay, where the defendant signed the bill as correct, and ordered the dubásh to pay the amount. The dubásh gave the plaintiff Rs. 500 in cash, saying he would pay the balance next day. The plaintiff said he would prefer a "receipt" for his bill, and returned the Rs. 500. An acknowledgment was then given to him, by which the dubásh promised to pay the bill for Rs. 574-5-0, "immediately on the money being received from Mr. S."

On the day following, the plaintiff took out a summons in the Small Cause Court against the defendant, whom he arrested, on making an affidavit that he was about to leave Bombay; and the Court held that "there was no valid substitution of the liability of any person or fund, in place of the original liability of the defendant;" and gave judgment for the plaintiff for Rs. 574-5-0 and costs; which judgment, as to the principal sum, was affirmed by the High Court, but costs on the sum of Rs. 500, originally paid to, and returned by, the plaintiff, were disallowed.

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CASE stated for the opinion of the High Court, pursuant to the provisions of Sec. 55 of Act IX. of 1850, and Sec. 7 of Act XXVI. of 1864, by John O'Leary, Acting First Judge of the Bombay Court of Small Causes:—

"This action was brought to recover the sum of Rs. 587-5-0, for goods supplied by the plaintiff to the British ship 'Compta,' of which the defendant was master. On the 27th of June, the ship being about to leave Bombay, the plaintiff applied to the captain for payment of an account against the ship, Rs. 574-5-0.

"About four P.M. on that day, the captain and the plaintiff arrived at the office of Kharsedji Mancharji, the dubásh of the ship. The plaintiff demanded a settlement of his account. The defendant signed the account as correct, and directed the dubásh to enter the amount in the ship's general account against the owners, which the dubásh did. The dubásh thereupon handed to the plaintiff Rs. 500 in cash, as a payment on account, stating that he would pay the balance on the next day. The plaintiff at first accepted the money; but

in a few minutes returned it, saying he did not care about having cash, and would prefer an acknowledgment from the dubásh for the entire amount.

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“ Owing to the prevarication of the plaintiff in the witness-box, it was impossible to ascertain precisely what it was he asked from the dubásh. He stated, however, several times in the course of his evidence, that what he asked for was ‘ a receipt for his bill.’ Thereupon the dubásh wrote and handed to the plaintiff a Gujaráti document, of which the following is a translation :—

‘ To Memon Allarákia Alí, written by Pársi Kharsedji Mancharji Subhedár; to wit: There is one bill of the bum-boatman in respect of the ship “ Compta ” (for) Rs. 574, namely, five hundred and seventy-four; this money is to be duly paid to you immediately on being received from Mr. Shepherd. Pársi Kharsedji Mancharji Subhedár: his own handwriting.’ This document bore an adhesive stamp of the value of one anna.

“ This document was either read by or explained to the plaintiff, who expressed himself perfectly satisfied. The parties left the office of the dubásh, and the defendant shortly afterwards returned on board his ship. It was understood by all parties at the aforesaid interview that the ‘ Compta ’ was to sail on the following day (28th), and she did leave her moorings at some time in the evening of that day.

“ At about three or four P.M. on the 28th of June, the plaintiff applied to me on an affidavit: stating that the sum of Rs. 587-5-0 was due to him by the defendant; that a summons had been issued from the court; and that the defendant was about to leave Bombay. I issued the usual warrant; and on the evening of the 28th the defendant was arrested on board his ship in the Bombay harbour, after she had left her moorings, and brought on shore. He paid into court under protest the sum of Rs. 647-14-3, and was discharged, and proceeded on his voyage. No evidence was offered to me as to the sum of Rs. 13, claimed in the summons for goods supplied on the 27th of June.

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“Upon proof of the foregoing facts, Mr. Judge, for the defendant, contended that the plaintiff had, for valuable consideration, agreed to accept either the dubásh, or Mr. Shepherd, or the owners or the agents of the ship ‘Compta’ in Bombay, as his debtor in the place of the defendant; and that there should be a verdict for the defendant.

“Dr. Reid, for the plaintiff, contended that there was no substitution of any other debtor in place of the defendant.

“Mr. Judge required me to give judgment, contingent upon the opinion of the High Court, upon the following questions:—(1) Whether the acts and representations of the plaintiff, in the office of the dubásh on the 27th of June, and his acceptance of the Gujaráti document, did not amount to a valid discharge of the defendant from his liability to the plaintiff; (2) Whether, under the above circumstances, an application by the plaintiff to the dubásh for payment, and a refusal by the dubásh, were not conditions precedent to the plaintiff’s right (if any) to sue the defendant.

“I was of opinion that there was no valid substitution of the liability of any person or fund, in place of the original liability of the defendant; and, contingent on the opinion of the High Court as aforesaid, I gave a verdict for the plaintiff for Rs. 574-5-0 and costs: And I request the opinion of the High Court with respect to the two questions aforesaid.”

The case came on for hearing this day before SAUSSE, C.J., and COUCH, J.

*Taylor* for the appellant, defendant in the court below.

No one appeared for the plaintiff.

PER CURIAM:—The Court confirms the judgment of the Court of Small Causes as to the principal sum payable, namely, Rs. 574-5-0; but varies the same as to the costs, and orders that judgment be entered for the plaintiff for Rs. 574-5-0, and costs to the amount only of costs properly payable on the recovery of Rs. 74-5-0, and no costs for the warrant issued for the arrest of the defendant; and the Court further orders that each party do bear his own costs of the reserving and stating the case for the opinion of this Court.