

1867.
Dec. 5.

Referred Case.

AMI'EHAND JAMNA'DA'S *Plaintiff.*

MAGGAN AMTHU' *Defendant.*

Hearing of Suit—Commencement of Suit—Stamp Duty Refund—Act X. of 1862, Sec. 26.

Held that for the purpose of refund of half stamp duty under Sec. 26 of Act X. of 1862, the hearing of a suit in a Small Cause Court commences when proof of the service of the summons is taken on the day appointed for the hearing; and where proof of the service of the summons has been previously taken, it must be considered as taken at the commencement of the proceedings on the day appointed for hearing.

QUESTION submitted for the opinion of the High Court by Gopálráv Hari Deshmukh, Judge of the Small Cause Court at Ahmedabád:—

“Whether or not the hearing of a case should be considered to have commenced, for the purpose of refusing or granting a certificate for the refund of stamp duty, when a party, by application to the court, gets his case postponed on the day on which it is set down for final disposal, the application being either before or after the proof of the service of the summons has been recorded.

“On the day of hearing, the proof of the service of the summons was taken, and then the plaintiff stated that an amicable settlement was set on foot, and that the result would be known in two days. The case was, therefore, postponed for two days, at the end of which time the plaintiff stated that the claim was settled, and applied to have it withdrawn. He was allowed to do so, when he raised the question of giving him a certificate for the refund of half the stamp duty paid by him on the plaint. He argued that the hearing was postponed at his request, made after the proof of the service of the summons had been recorded, but that his request was not the commencement of the hearing of the suit, which properly begins with the defendant's answer, and that the recording of the proof of the service of summons was also not the hearing, because it could be taken on any day after the service, for the convenience of the bailiff, under

the Circular Order of the High Court No. 1073 dated 17th July 1867.”

PER CURIAM (COUCH, C. J., and NEWTON, J.) :—The hearing of the suit must be considered to have commenced when proof of the service of the summons has been taken on the day appointed for the hearing ; and where, under the Circular Order of the High Court No. 1073 dated 17th July 1867, proof of the service has been previously taken, it must be considered as if it had not been taken* until the commencement of proceedings in the case on the day appointed for hearing.

NOTE.—Sec. 26 of Act X. of 1862 :—“ In modification of so much of Sec. 98 of the Code of Civil Procedure as declares that on the application of the plaintiff, reciting the substance of any agreement, compromise, or satisfaction, in accordance with which a suit is adjusted and disposed of, the Court, if satisfied that such agreement, compromise, or satisfaction has been actually entered into or made, shall grant a certificate to the plaintiff authorising him to receive back from the Collector the full amount of stamp duty paid on the plaint, if the application shall have been presented before the settlement of issues, or half the amount if presented at any time after the settlement of issues before any witness has been examined,—it is enacted that if such application shall have been presented before the suit is called up for the settlement of issues, or in suits in which the summons to the defendant shall be for the final disposal of the suit, as directed in Sec. 41 of the said Code, and in Sec. 9 of Act XLII. of 1860 (*for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts established by Royal Charter*), before the hearing of the suit has commenced, the Court, if satisfied that such agreement, compromise, or satisfaction has been actually entered into or made, shall grant a certificate to the plaintiff authorising him to receive back from the Collector half the amount of stamp duty paid on the plaint. Provided that no such certificate shall be granted if the adjustment between the parties be such as to require a decree to pass, on which process of execution can be taken out, or in any appealed suit.

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AMI'RCHAND
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v.
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