

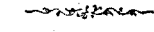
of the Honorable the High Court, the following question, namely :—

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“ Are all orders, not being decrees and decisions, issued under Act XI. of 1865, final, under Sec. 21 thereof; or can they be set aside under circumstances similar to those under which decrees and decisions can be set aside ?

“ I am of opinion that orders, not being decrees or decisions, issued under Act XI. of 1865, are final. If, however, the Honorable the Judges of the High Court rule otherwise, I shall dispose of the application, which has given rise to this reference, accordingly.”

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court is of opinion that it is not competent to the Judge to set aside the order rejecting the plaint, and that this case cannot be brought within the power, which may be possessed by a Small Cause Court, to correct, on review, an evident error or omission.



Referred Case.

July 14-

RA'ICHAND MANGAL..... *Plaintiff.*
ABDULLA' AMRUDDIN KOTVA'L..... *Defendant.*

Small Cause Court—Military Code.

Held that the rules and orders in the Military Code are not binding on a Small Cause Court.

CASE referred for the decision of the High Court, under Sec. 22 of Act XI. of 1865, by Gopálráv Hari Deshmukh, Judge of the Small Cause Court at Ahmedábád.

Question—“ Whether or not, in a suit against a camp follower, the Civil Court, established by Act XI. of 1865, will be bound by the rules and orders in Jameson's Code of Military Regulations.”

“ The law to be followed by Civil Courts in adjudicating upon claims is described in Sec. 26 of Reg. IV. of 1827 :— ‘ The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to

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the case ; in the absence of such Acts and Regulations, the usage of the country in which the suit arose ; if none such appears, the law of the defendant, and in the absence of specific law and usage, justice, equity, and good conscience alone. I am, therefore, of opinion that the rules and orders in the Military Code will not be binding upon Small Cause Courts, or any other Civil Court.

“The circumstances of the case are as follows:—The plaintiff has sued upon an account purporting to be signed by the defendant. The defendant denies his signature, and pleads that, as a public follower of the camp in the receipt of Rs. 25 per mensem as his pay, he was not entitled to credit for so large an amount as is alleged by the plaintiff to have been lent. In support of his plea, he produces para. 176, Sec. VII., Bazár, in the 2nd Appendix to Jameson’s Code. The paragraph belongs to a General Order issued by His Excellency the Commander-in-Chief, under date the 28th of August 1852. It runs thus:—‘No credit beyond one calendar month shall be given to sepoys or public followers, and no award will be passed, unless the claim be filed within one month subsequent to the issue of pay next after the debt has been incurred, in accordance with Art. 33, pp. 77 and 43, p. 78, Sec. VII., Jameson’s Code ; and such credit shall only be allowed upon the authority of a written document, distinctly specifying to what extent it is to be given, and *shall not exceed half the rate of the debtor’s pay*, except in special cases, when the reasons for allowing increased credit shall be clearly set forth in the document ; but in this case *such additional credit shall not exceed one-fourth of the rate of the debtor’s pay*. These documents shall be signed by officers commanding troops, companies, or in charge of departments.’

“Whether or not the account was signed by the defendant is a question of fact, but I have thought it proper to refer the other question, which, in my opinion, is one of law.

“Major G. Cooper, Assistant Judge Advocate General, N. D. A., and Colonel W. L. Cahusac, Assistant Adjutant General, N. D. A., who have been examined on behalf of the

defendant, state that they both were the Cantonment Magistrates at Ahmedábád, and that the rule was fully carried out as respects the Court of Request in the camp (Acts XI. of 1841 and XII. of 1842), and that it has been publicly and repeatedly notified to the camp traders."

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PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court is of opinion that the rules and orders in the Military Code are not binding on the Small Cause Court.

Referred Civil Case.

July 14.

CHOTA LAL AMRITLAL.....Plaintiff.
 BOMBAY, BARODA, & CENTRAL INDIA RAIL-
 WAY Co.Defendants.

Stamp—Description of Document—Civ. Proc. Code, Sec. 40.

Held that the description of a document delivered to the Court under Sec. 40 of the Code of Civil Procedure is neither a petition nor an application, liable to duty within the meaning of the Stamp Act.

CASE referred for the decision of the High Court by Goparáy Hari Deshmukh, Judge of the Small Court at Ahmedábád, under Sec. 22 of Act XI. of 1865:—

Question—"Whether the description of a document required by the plaintiff from the defendant, under Sec. 40 of Act VIII. of 1859, delivered to the Court that the same may be called for from the defendant, under Sec. 43 of the same Act, should be considered the first application for the summons of a witness to produce a document which is exempted from stamp duty by Act XXVI. of 1867, Sec. 6, Art. 10."

The Judge was of opinion that the description should not be considered the first application for the summons of a witness to produce a document, or 'in respect of the production or filing of any exhibit' which is exempted from stamp duty by the Act above quoted. The exemption should, he thought, apply to the first application made subsequent to the description, which is always given with the plaint.

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court is of opinion that the description of the document given