

[ORIGINAL CIVIL JURISDICTION.]

*Suit No. 814 of 1873.*1875.
January 28.

SOKA'BA'I Plaintiff.

LAKSHMIBA'I Defendant.

Practice—Costs—Payment of the costs of a summons not a condition precedent to proceeding with the Suit.

The Court will not order, as a condition precedent to proceeding to the hearing of a suit, the payment of the costs of a summons adjourned from chambers into court and there dismissed with costs.

Scoble, A. G., on behalf of the defendant, moved on affidavit, and after notice of motion, that the plaintiff should be ordered to pay the costs of a summons in chambers before *MARRIOTT, J.*, and adjourned by him into Court, and there dismissed with costs, as a condition precedent to proceeding to the hearing of the suit.

Inverarity for the plaintiff:—The Court has no power to make such an order, especially as the summons was dismissed on technical grounds, not on the merits. There is no allegation that the defendant has not exhausted her remedy by attachment. The only case in which the payment of costs is made a condition precedent is when another suit is brought on the same cause of action: *Gibbs v. Goles (a)*, *Shoredicke v. Gilbard (b)*, and *Aime v. Chinnock (c)*.

Scoble, in reply:—The plaintiff is purposely keeping out of the way. The rules of practice here are not so stringent as those in the common law courts in England. The High Court in this country absolutely controls the cause lists, and, therefore, has power to say that this case shall not come on until the plaintiff shall have paid the costs of the summons. These costs were incurred by the action of the plaintiff herself in taking out the summons in chambers, which was subsequently dismissed.

(a) 7 Dowl. 325. (b) 8 Dowl. 296. (c) 8 Dowl. 736.

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BAYLEY, J. :—The learned Advocate-General has cited no case as an authority for the making of such an order as that for which he asks, while, on the other hand, though in two of the cases cited by Mr. Inverarity, viz., *Gibbs v. Goles and Aime v. Chinnock*, the circumstances relied on by the counsel asking for the order were considerably stronger in his favour than they are in the present case, yet the orders were refused. The defendant appears to me to have taken quite a mistaken view of her position. I must, therefore, refuse to make any such order as that for which she asks. The costs of this application to be borne by the defendant.

[APPELLATE CIVIL JURISDICTION.]

February 10.

Special Appeal No. 82 of 1874.

SULEMA'N VA'DU and three others.....*Appellants.*

TRIKAMJI VELJI*Respondent.*

Vendor and Purchaser—Sale of land—Specification of area—Misdescription.

[The specification in a deed of sale of land of the area of the land sold *prima facie* implies that the area was regarded as material by the parties, and, unless it is clear that the precise area was not regarded as material, proportional compensation will be awarded to the purchaser of land, the real area of which is found to fall short of the area specified in the deed of sale.]

THIS was a special appeal from the decision of DeH. Larpent, Judge of the District of Poona, amending the decree of the late Court of the Principal Sadar Amin of Poona.

The material facts of the case are briefly as follows :—

On the 17th September 1863, Ladhá Ibráhim, whom the special appellants represent, purchased from one Ramábái a field called Ghorkhillá for Rs. 2,999. On the 26th September following he sold it to the plaintiff, now special respon-