

“ is qualified and liable to serve on Juries. But persons who do not understand the English language shall not serve on Juries nor be inserted in the list.”

The rule made in 1842, as to the precept to the Sheriff to summon jurors (No. 518, page 154 of the Collection of Rules and Orders of the Supreme Court) directs that “ The Clerk of the Crown shall, fourteen days at least before each Sessions of Oyer and Terminer, issue his precept to the Sheriff, commanding him to summon thirty of the principal inhabitants, resident in the town and island of Bombay, being Subjects of the King, to attend as a Grand Jury, and forty-eight good and sufficient men, being Subjects of the King, resident within the island of Bombay, or the factories subordinate thereto, to serve on the Petty Jury.”

And by the next succeeding rule (519) one-half of those summoned to serve as petty jurors shall be (1) British subjects.

1876.

REG.
v.VITHALDAS
PRANJIVAN-
DAS AND
OTHERS.

[APPELLATE CIVIL JURISDICTION.]

Civil Referred Case No. 97 of 1876.

PRANSHANKAR SHIVSHANKAR (DEFENDANT, APPELLANT) v.
GOVINDHLAL PARBHUDAS (PLAINTIFF, RESPONDENT).

Action for damages caused by a civil action—Costs.

No action is maintainable for damages occasioned by a civil action, even though brought maliciously and without reasonable and probable cause; nor will it lie to recover costs awarded by a Civil Court.

THE following case was submitted for the opinion of the High Court by Gopalrao Hari Deshmukh, Judge of the Court of Small Causes at Ahmedabad:—

“ The plaintiff Pranshankar obtained a decree against one Govind Khusab, in the Subordinate Judge’s Court, and got two houses attached on the 20th July 1872. Govind Purbhudas, defendant in the present suit, applied to the Court under Section 246 of the Code of Civil Procedure, on the 1st August 1872, for removal of the attachment laid on the houses, alleging that they were purchased by him. The objection was allowed by the Subordinate Judge, who ordered the attachment to be removed. Whereupon the plaintiff instituted a regular suit against the defendant which was decided in favour of the latter. Against this decision the plaintiff appealed to the Assistant Judge’s Court, which decided on the 26th August 1874 that the purchase-deed was fraudulent, and that the objection to the sale be disallowed. Consequently the plaintiff recovered the amount decreed, not by sale of the houses, but by cash payment of Rs. 600. The plaintiff

(1) See 1 Morley’s Digest, page 89, British subject, Note 1.

1876.

PRANSHAN-
KAR SHIV-
SHANKAR
VS.
GOVINDHLAL
PARBHUDAS.

now seeks in this Court to recover interest at 9 per cent. per annum, from 20th July 1872 to 25th October 1875, during which period he was prevented from executing his decree by the defendant, and the amount of costs that was paid by him to the defendant, as awarded by the Subordinate Judge in the miscellaneous application for removing the attachment. The question is whether a suit for such damages can be maintained.

“My opinion is that the claim should be maintained, as the transaction on the part of the defendant appears to be tinged with fraud, as seen from the decision of the Assistant Judge.”

The reference was considered in Court by MELVILL and NA'NA'-BHA'I HARIDA's, JJ., on the 28th November 1876.

No counsel or pleader was instructed on either side.

PER CURIAM:—The Court is of opinion that the suit will not lie. An action is not maintainable for damages occasioned by a civil action, even though brought maliciously, and without reasonable and probable cause (*see* Addison on Wrongs, p. 599, 3rd edition); neither will a suit lie to recover costs awarded by a Civil Court, though it may lie for costs which could not be so awarded: *Chengulva Raya Mudali v. Thangatchi Ammal* (1).

PRIVY COUNCIL.

June 20 and 21, 1876.

PRESENT :

SIR BARNES PEACOCK.		SIR ROBERT P. COLLIER.
SIR MONTAGUE E. SMITH.		SIR HENRY S. KEATING.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT BOMBAY.

COWASJEE NANABHOY (DEFENDANT) *v.* LALLBHOY VULLUBHOY
AND OTHERS (PLAINTIFFS).

Contract of partnership—Right of co-partners to dissolve partnership.

A contract between a partner and his co-partners for remuneration to the former for the management of the partnership business by a commission on the sale, during his life-time, does not, in the absence of any express agreement to that effect, imply a renunciation of the right of the co-partners to dissolve the partnership if they find that it cannot be carried on, except at a loss: nor does it imply

(1) 6 Mad. H. C. Rep. 192.