

ORIGINAL CIVIL.

(61)

Before Sir M. R. Westropp, Kt., Chief Justice, and Sir C. Sargent, Justice.

MANECKJI LIMJI MANCHERJI (ORIGINAL DEFENDANT), APPELLANT,
 v. GOOLBAI (ORIGINAL PLAINTIFF), RESPONDENT.*

1873
 July 20.

Practice—Appeal—Security for costs.

Mere poverty is no ground for requiring an appellant to give security for the costs of the appeal.

The plaintiff in this case sued the defendant for breach of promise of marriage, and on the 7th March 1878 obtained a decree for Rs. 3,000 damages and costs of suit. The defendant appealed, and the plaintiff took out a summons, calling on the defendant to show cause why he should not be required to give security for the costs of the suit and of the appeal before proceeding with the appeal.

Inverarity for the defendant showed cause.—We admit the poverty of the defendant and his inability to pay either the costs or the damages which have been awarded, and we admit that the defendant is unable to give the security now required. But poverty is no ground for requiring additional security: Chitty's Archbold, p. 8416; *Ross v. Jacques*; (1) *Armitage v. Grafton*; (2) Broughton's Civil Procedure Code of 1859, notes to section 342; *Monohur Dass v. Khodrum Begum*. (3) the plaintiff is too late in requiring security. The defendant has already incurred all the expenses of preparing for the appeal: *Wainright v. Blund*. (4)

Macpherson, contra.—This is really an appeal by a pauper, and the Court would not allow a pauper to appeal in a suit of this kind, which is admittedly one brought to vindicate the character of the plaintiff. Here the defendant admits he cannot pay our costs, and yet he puts us to the expense of an appeal. [SARGENT, J.—You chose to sue a poor man, and you succeed; why should his poverty deprive him of his right to appeal? Where is the line to be drawn?] We are willing to abandon the damages we have received if he is put under terms as to the appeal.

*Suit No. 347 of 1877.

(1) 8 M. & W. 135 (2) 10 Jur. 377. (3) 1 Bourke, 111, (4) 2 Cr. M. & R. 740.

1878
 MANECKJI
 LIMJI
 MANCHERJI
 v.
 GOOLBAI.

WESTROPP, C.J.—We must decline to make the order. The poverty of the defendant is no ground for depriving him of his right to appeal.

Summons discharged.

Attorneys for plaintiff.—Messrs. *Hearn, Cleveland and Little.*

Attorneys for defendant.—Messrs. *Ardesir and Hormusji.*

ORIGINAL CIVIL.

(62)

Before Sir C. Sargent, Justice.

1879
 February
 21, 22, 25.

THE ORIENTAL BANK CORPORATION, THE CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA, AND THE AGRA BANK (LIMITED), (PLAINTIFFS), v. JOHN FLEMING AND OTHERS (DEFENDANTS).*

*Deed—Cancellation of signature—Release—Composition deed—Misrepresentation
 Negligence—Contract Act (IX of 1872), Secs. 13, 18, 19.*

The firm of Nicol & Co. having suspended payment, a general meeting of creditors was convened, at which it was unanimously resolved that the business of the firm should be wound up by voluntary liquidation under the supervision of a committee; and that the winding up should be conducted by two trustees under the supervision and control of the said committee. At a subsequent meeting of the creditors the above resolutions were confirmed, and it was further resolved that a composition deed should be prepared in pursuance of the terms of the above resolutions. The adoption of this last resolution was strongly pressed upon the meeting by the solicitor for the insolvent firm on the ground that the mode of procedure therein proposed was proposed solely in the interests of the creditors. He entirely repudiated the idea that the members of the firm were to obtain any benefit by the proposed measure. No mention was made at either of the meetings of any release to be given to the parties.

The plaintiffs were creditors of Nicol & Co., and R., S. and B. were their respective agents in Bombay. R., S. and B. attended the said meetings on the plaintiffs' behalf, and were appointed members of the committee of supervision and control.

A few days after the last-mentioned meeting, M., one of the partners of the insolvent firm, called upon R., who at the time was deeply engaged in pressing and important business. M. produced a deed which had been prepared by the solicitors of the firm, and which contained a clause by which the creditors, in consideration of the assignment of the estate to trustees, released and discharged the members of the firm from all claims. M. was aware of the existence of the release in the deed. He asked R. to execute the deed, stating that it was "the trust deed." R. requested M. to leave the document, saying that he would go over it and return it in the course of the day. M. then earnestly pressed him to execute the document at once, stating that was of the utmost importance that no time

* Suit No. 563 of 1878.