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Cause Court it was returned to him with an endorsement thereon that, according to s. 15 of the Civil Procedure Code, the suit should be instituted in the Court of the Cantonment Magistrate. The plaintiff, therefore, again took the plaint to the Cantonment Magistrate, who returned it with an endorsement, that, according to s. 17 of the Civil Procedure Code, cl. (*b*), the suit ought to lie in the City Small Cause Court."

The plaintiff having re-presented his plaint in the City Small Cause Court, the latter referred the following questions to the High Court for decision:—

1. Is the Court of the Cantonment Magistrate at Ahmedabad with Small Cause Court jurisdiction within the cantonment up [171] to Rs. 200 to be considered a Court of " the lowest grade" within the meaning of s. 15 of the Civil Procedure Code, in reference to the Small Cause Court at Ahmedabad, which also has jurisdiction within the cantonment?

2. And if so, whether the present plaint should not be filed in the Court of the Cantonment Magistrate at Ahmedabad?

*Mahadev Bhaskar Chaubal*, for the plaintiff.—Both the Courts have jurisdiction to try the suit. Under s. 15 of the Civil Procedure Code (Act XIV of 1882) the suit should be instituted in the Court of the lowest grade competent to try the cause, and as the Court of the Cantonment Magistrate had jurisdiction up to Rs. 200, and the amount sued for did not exceed it, his Court was the proper Court. See *Dwarkanath Dutt* v. *Bhathu Howoldar* (1).

*Vishnu Krishna Bhatvadekar*, for the defendant.

JUDGMENT.

SARGENT, C.J.—Both Courts had jurisdiction to try the cause—the Small Cause Court of the cantonment, because the cause of action arose within the local jurisdiction; and the Small Cause Court of the City, because the defendant resided there: but the former, whose jurisdiction only extends to Rs. 200, whilst that of the latter extends to Rs. 500, must, we think, be regarded as the Court of lower grade, and, therefore, under s. 15 of the Civil Procedure Code (Act XIV of 1882), the proper Court to try the suit. See *Dwarkanath Dutt* v. *Bhathu Hawoldar* (1).

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## ADMIRALTY JURISDICTION.

*Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice Farran.*

THE BOMBAY AND PERSIA STEAM NAVIGATION COMPANY, LIMITED (*Plaintiffs*) *v.* THE S. S. " ZUARI," (*Defendant*).* [26th April, 1887.]

*Practice—Review of judgment—No appeal from order granting review—Civil Procedure Code (Act XIV of* 1882), *s.* 629.

No appeal lies from an order granting a review of judgment, except in the cases set forth in s. 629 of the Civil Procedure Code (Act XIV of 1882).

[**F.**, 22 C. 3; 11 C.L.J. 26=14 C.W.N. 344=5 Ind. Cas. 182; 65 P.R. 1891; 62 P.R. 1895; 12 Ind. Cas. 624=10 P.L.R. 1912; **Appr.**, 18 A. 44; 21 B. 328 (330); 16 C. 788; **R.**, 22 C. 984 (989); 24 C. 878; 9 Ind. Cas. 320; 14 Ind. Cas. 39.]

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* Admiralty Suit No. 7 of 1886.

(1) 22 W.R. C. R. 457.

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IN this suit, which arose out of a collision at sea, a decree for the plaintiffs was passed on the 14th April, 1887. On the 21st [172] April the defendant applied for a review of judgment, on the ground of certain statements alleged to have been made, after the case had been concluded by a person who had been examined as a witness for the plaintiffs at the trial, to the effect that, " if he had told the truth, things would have gone differently," and stating facts which, if true, would have affected the plaintiffs' case. On the 25th an order was made by Bayley, J., granting the review applied for. The plaintiffs appealed.

*Russell*, for the respondent, raised the preliminary point that no appeal lay from an order granting a review. He contended that s. 629 sets forth the only cases in which an appeal from an order granting a review is permitted; and that this case did not come within any of those clauses. He refrered to *Abdul Rahim* v. *Racharai* (1); and, as to the old practice, Broughton's Civil Procedure Code, at p. 295.

*Macpherson*, (Acting Advocate General), for the appellants, *contra*.

JUDGMENT.

SARGENT, C. J.—This is an appeal from an order of Mr. Justice Bayley granting a review. A preliminary objection has been taken, that in the present case no appeal lies from that order.

Section 623 of the Civil Procedure Code is the first section dealing with the subject of review, and it states the circumstances under which a review may be applied for. Then come ss. 624, 626 and 629, which are the material sections in dealing with the case now before us. The last of these sections provides that there shall be no appeal against an order refusing a review, but that there may be an appeal against an order granting a review, where such order is " (*a*) in contravention of the provisions of s. 624, or (*b*) in contravention of the provisions of s. 626, or (*c*) after the expiration of the period of limitation prescribed therefor, and wi hout sufficient cause."

The question now before us is, whether the order of Bayley, J., allowing a review was " in contravention of the provisions of s. 626;" and to decide this we have to consider whether these words, which are used in cl. (*b*) of s. 629, mean that there may be an appeal on the ground that there was not " sufficient [173] ground" for granting the review,—in other words, an appeal on the merits generally, or only on the ground that the Court has granted the review without first coming to a conclusion that there was " sufficient ground," or without notice of the application for review having been given to the opposite party, or without strict proof of the allegation referred to in proviso (*b*).

We think that the latter is the true construction of this clause, and that there is no contravention of the provisions of s. 626, if the Court, to which the application has been made, was of opinion that the review should be granted, and if the rules laid down in the provisos have been observed.

In the present case we understand that the learned Judge, who made the order, was of opinion that there was sufficient ground for review, and he accordingly granted the application. It is not contended that there has been any violation of the rules contained in the provisos to s. 626, and we must, therefore, hold that there is no appeal from the order.

(1) 1 A. 363.

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FARRAN, J.—I am of the same opinion. Section 629, cl. (*b*), gives the right to appeal against an order granting a review only where the provisions of s. 626 have been contravened. These provisions are four in number, *viz.*, (first) that, if the Court be of opinion that the application for review should be granted, it shall grant the same; (second) that the Judge shall record his reasons for granting it; (third) that the party applying for review shall give previous notice of his application to the opposite party; and (fourth) that where the applicant for review alleges that the new matter or evidence, the discovery of which is the ground of his application, was not within his knowledge when the decree was passed, he shall give strict proof of that allegation. In the present case no one of these four provisions has been contravened and there is, therefore, no appeal against the order granting the review.

*Appeal dismissed with costs.*

Attorneys for the appellants:—Messrs. *Winter and Burder.*
Attorneys for the respondent:—Messrs. *Chalk, Walker and Smetham.*

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**12 B. 174.**

## [174] ORIGINAL CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.*

KARIM MAHOMED JAMAL AND ANOTHER (*Plaintiffs*) *v.* RAJOOMA AND NOORBAI (*Defendants*).* [23rd September, 1887.]

*Specific performance—Decree in favour of plaintiff—Rectification of decree on application of defendant—Motion to set aside decree dismissed—Subsequent application to rectify decree—Res judicata—Practice—Objection taken at hearing that the application made to Court was not the application of which notice had been given to opposite party—Preliminary point.*

The plaintiffs sued in 1877 for specific performance of an agreement, dated 27th September, 1871, by which certain landed properties were to be divided, as specified in the agreement, between them and the defendants. The case came on for hearing on the 13th September, 1878. The defendants did not appear, and a decree *ex-parte* was made, which declared that the plaintiffs were entitled to have the agreement of the 27th September, 1871, specifically performed, and referred the suit to the Commissioner for the preparation of conveyances, &c. The decree was sealed on the 9th October, 1878. No further steps were taken by any of the parties for six years, and in September, 1884, the matter was first brought before the Commissioner. He then directed the defendants to lodge with him all the title-deeds of the properties which by the agreement were to go to the plaintiffs as their share. The defendants thereupon applied that the plaintiffs should be directed to lodge the title-deeds of the properties which by the agreement were to go to them, but the Commissioner refused to make this order, being of opinion that he was not authorized to do so under the decree, which contained no direction to him in respect thereof. The defendants on the 10th November, 1884, gave notice to the plaintiffs, that they would apply to the Court—(1) "to set aside or vary its order of the 13th September, 1878, so far as it related to the lodging of title-deeds, &c.; (2) to appoint a receiver of certain properties mentioned in the agreement; (3) to order the plaintiffs to deliver up to the defendants the properties which belonged to their share under the agreement; (4) to order certain accounts to be taken." This motion was not brought on until the 10th September, 1885, on which day it was dismissed with costs; the Judge holding that the defendants had not shown sufficient cause to justify the setting aside of the decree under s. 108 of the Civil Procedure Code (Act XIV of 1882). The plaintiffs having still kept possession of certain of the

* Suit No. 667 of 1877.