

1887  
AUG. 23.  
ORIGINAL  
CIVIL.  
12 B. 50.

Bombay and tendering them to the person giving the order than (in the absence of evidence of usage) to say the contrary that this is so through the practical effect of an order like the present, when accepted, is to constitute the relation of vendor and purchaser between the parties. As to the legal relation which such a contract creates, see *Ireland v. Livingston* (1). I have already pointed out that it was the admitted intention of the parties that the defendant's order [63] should be carried out in England in the usual manner. The terms of the plaintiffs' letter (written under the instructions of Carramchand) offering the defendant goods *ex Merton Hall* and *ex Tuban Head* in fulfilment of his order, indicate, I think, an intention on the plaintiffs' part to conceal from the defendant the fact that they had not themselves ordered out the goods. Their present contention is for the first time set up in their letter of the 3rd November, 1885.

It is to be regretted that the law in this case does not allow of an appeal from my decision, as it involves a question of importance. I dismiss the suit with costs, including costs of application for new hearing.

Attorneys for the plaintiffs: Messrs. *Bamanji and Hormasji*.

Attorney for the defendant: Mr. *Khanderav Moroji*.

12 B. 63.

#### APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

*In re* PREMCHAND DOWLATRAM.\* [9th February, 1887.]

*Civil Procedure Code (Act XIV of 1882), s. 174—Production of document—Court's jurisdiction to punish a witness for refusing to produce a document—Procedure—Indian Penal Code (Act XLV of 1860), s. 175—Criminal Procedure Code (Act X of 1882), s. 480.*

A witness was summoned to produce a document in Court in connection with a certain suit. He attended the Court, but did not produce the document, stating on oath that it was not in his possession. But this statement was disbelieved, and the Court fined him Rs. 75, under s. 174 of the Code of Civil Procedure (Act XIV of 1882).

*Held*, that the fine was illegally levied. The jurisdiction of the Court to punish under s. 174 of the Civil Procedure Code exists only in the case of a witness, who, not having attended on summons, has been arrested and brought before the Court.

The case of a witness who having a document will not produce it, is provided for by s. 175 of the Indian Penal Code (Act XLV of 1860), and s. 480 of the Code of Criminal Procedure (Act X of 1882).

Where a witness denies, on oath, that he has the possession or means of producing a particular document, he can, if he has been guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding.

[64] THIS was an application under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

The applicant, Premchand Dowlatram, was summoned to produce certain books of account in suit No. 1382 of 1895 pending in the Small Cause Court at Ahmedabad. He attended the Court in obedience to the summons, but did not produce the books required, stating on oath, as an excuse, that they were in the possession of his partner, who refused to

\* Application under Extraordinary Jurisdiction No. 62 of 1886.

(1) 5 H.L. 395.

part with them. The Court disbelieved this statement, and fined him Rs. 75, under s. 174 of the Civil Procedure Code.

Thereupon Premchand filed the present application, under the extraordinary jurisdiction of the High Court, praying for a reversal of the lower Court's order, on the ground that it was illegal *ad ultra vires*.

The High Court granted a rule *nisi*, calling upon the Judge of the Small Cause Court to show cause why the order should not be set aside or varied.

*Govardhan M. Tripathi*, for the applicant.

#### JUDGMENT.

WEST, J.—In this case the Judge of the Small Cause Court at Ahmedabad has fined the applicant Rs. 75 for not producing a document which he had been summoned to produce. The applicant came to the Court, but then stated on oath that he had not the document, and could not produce it. Thereupon the Judge disbelieving this statement fined him ostensibly under the provisions of s. 174 of the Code of Civil Procedure. A careful perusal of that section, however, shows that the present case did not fall within it. The jurisdiction to punish under the enactment exists only in the case of a witness, who, not having attended on summons, has been arrested and brought before the Court. The case of a witness who, having a document, will not produce it, is provided for by s. 175 of the Indian Penal Code, and a limited summary jurisdiction is given to the Court in such a case by s. 480 of the Code of Criminal Procedure (X of 1882). The mere provision of this mode of procedure by the Legislature implies that another and different one is not intended to be followed; and if the Judge of the Small Cause Court could fine a witness attending his Court under s. 174 [65] of the Code of Civil Procedure, he would deprive him of the appeal given by the law against a similar decision under s. 480 of the Code of Criminal Procedure. Where a witness denies, on oath, that he has the possession or means of producing a particular document, he can, if he has been guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding.

We reverse the order as made without jurisdiction, and direct that the fine paid by the applicant be restored to him.

*Order reversed.*

12 B. 65.

#### APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Birdwood.*

LAKSHMIBHAI BAPUJI OKA (*Original Applicant*), Appellant v.  
MADHAVRAV BAPUJI OKA AND OTHERS (*Original Opponents*),  
*Respondents*.\* [23rd March, 1887.]

*Decree—Execution—Maintenance—Decree for payment of an annuity without specifying date of payment—Default in paying such annuity—Enforcement of payment by execution of decree—Limitation—Computation of time.*

A Hindu widow obtained a decree, dated 7th September, 1865, directing that a sum of Rs. 86 should be paid to her every year on account of her maintenance.

\* Second Appeal, No. 112 of 1886.