

The plaintiff sued to recover expenses incurred by him in defending a criminal prosecution instituted against him by the defendant.

[101] The defendant's pleader raised the objection that the claim being one for compensation of the nature set out in sch. II, cl. 35 (c) of the Provincial Small Cause Courts Act, IX of 1887, the Small Cause Court had no jurisdiction over it.

The question referred for decision was :—

Whether a suit to recover costs actually incurred is identical with a suit for compensation as contemplated by the aforesaid clause ?

The opinion of the Small Cause Court Judge was in the negative.

Daji Abaji Khare, for the plaintiff, contended that costs incurred in criminal prosecution are damages, and a suit to recover the same can lie in a Small Cause Court.

Vasudev Gopal Bhandarkar, for the defendant :—The Court of Small Causes has no jurisdiction to try the suit. Such costs are "compensation" within the meaning of the term used in sch. II, cl. 35 (c) of Act IX of 1887.

JUDGMENT.

SARGENT, C. J.:—There is no cause of action to recover costs incurred in defending a criminal prosecution, except in the form of damages or compensation in a suit for malicious prosecution. This suit is excluded from the jurisdiction of a Small Cause Court.

14 B. 101.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

KHEMA KANUJI (*Applicant*) v. DHANJI FRAMJI (*Opponent*).*
[25th July, 1889.]

Review—Civil Procedure Code (Act XIV of 1882), s. 624—Absence or want of notice no ground for review by another Judge—Practice.

In the absence of the decree-holder and without giving him notice of the day fixed for the hearing of the *darkhast*, the Subordinate Judge struck off an execution proceeding.

Held, that under s. 624 of the Civil Procedure Code (XIV of 1882) an application to review the order could not be heard by the successor of the Judge who made it.

[102] THIS was a reference from Rav Saheb Ranchhodlal K. Desai, Subordinate Judge of Surat, under s. 617 of the Code of Civil Procedure, in miscellaneous application No. 9 of 1889.

The question referred by the Subordinate Judge for the High Court's decision was :—

Whether it is competent to a Subordinate Judge to review an order passed by his predecessor in office in an execution proceeding for striking off the same, on the ground that the order was passed in the absence of the deceased decree-holder and without giving him notice of the day for the hearing of the *darkhast* ?

* Civil Reference No. 4 of 1889.

1889

JULY 25.

APPEL-

LATE

CIVIL.

14 B. 101.

The Subordinate Judge's opinion on the question was in the negative. *Vasudev Gopal Bhandarkar*, for the opponent. *Nagindas Tulsidas*, for the applicant.

OPINION.

SARGENT, C. J.—The application to review the order was not on the ground of the discovery of new and important matter of evidence or of a clerical error apparent on the face of the order, and, therefore, by s. 624, (XIV of 1882) Civil Procedure Code, could not be heard by any other Judge than the one who made it.

14 B. 102.

ORIGINAL CIVIL.

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

S. A. RALLI AND OTHERS (*Original Plaintiffs*), *Appellants v.*
 CARAMALLI FAZAI (*Original Defendant*), *Respondent*.
 [10th January, 1890.]

Stamp—Stamp Act I of 1879, sch. I, art. No. 46, and sch. II, cl. 2, and ss. 11 and 34—
Agreements for sale of goods—Broker's notes—Evidence Act I of 1872, s. 91.

The plaintiffs sued to recover damages for the non-acceptance of wheat which the defendant on the 16th May, 1889, by two contracts agreed to purchase. At the hearing, in order to prove the terms of the contracts, the plaintiffs tendered two notes, or memoranda of the contracts, which purported to be signed by the broker and also by the defendant. These notes were, in fact, the sold notes which the broker had given to the plaintiffs. Each of these notes had been stamped with an anna stamp, but the stamp on one of them had not been cancelled at [103] all, and the stamp on the other was without any mark of cancellation, except a small part of the first letter of the defendant's signature, consisting of a slightly curved line. On these notes being tendered in evidence, it was objected that they were inadmissible, being unstamped, having regard to ss. 11 and 34 of the Stamp Act I of 1879. The Court allowed the objection, and rejected the notes. The plaintiffs then sought to prove the contracts by oral evidence, contending that the sold notes did not themselves constitute the contracts, but were only memoranda of parol contracts prepared by the broker for the information of the parties. They further contended that the documents might be regarded as agreements for the sale of goods, and exempt from stamp duty, under cl. 2, sch. II, or at all events admissible on payment of a penalty—ss. 7 and 34.

Held, that the documents in question were documents of the nature of a note or memorandum chargeable under section No. 46 of sch. I, and were not exempt from duty under cl. 2 of sch. II.

Held, also, that the terms of the contracts were reduced to writing, and no evidence, except the documents themselves, could be given in proof of them—s. 91 of the Evidence Act I of 1872.

[*Appr.*, 28 B. 432=6 Bom. L.R. 436; R., 4 Bur. L.T. 171=11 Ind. Cas. 810; 4 Ind. Cas. 1086=U.B.R. (1909) 4th. Qr. (Stamp. 3); 15 Ind. Cas. 202=15 O. C. 58; 2 L.B.R. 103.]

SUIT to recover Rs. 3,062-8-0, with interest, as damages for non-acceptance of certain wheat which the defendant by two contracts, dated the 16th May, 1889, agreed to purchase from the plaintiffs.

The plaint alleged a "contract in writing" in both cases, and copies of both the alleged contracts in writing were annexed to the plaint.

* Suit No. 346 of 1883; Appeal No. 657.