ORIGINAL CIVIL.

Before Mr. Justice Russell, and on Appeal before Mr. Justice Candy and Mr. Justice Tyabji.

1900. *July* 11.

TEMPLETON (ORIGINAL PLAINTIFF), APPELLANT, *v.* LAURIE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Cause of action—False evidence not actionable—Conspiracy to give false evidence—Costs—Costs in the cause, meaning of such order made in an interlocutory proceeding.

No civil action lies against a witness for giving false evidence, and the fact that the evidence is given in pursuance of a conspiracy to obtain the conviction of the accused person does not make any difference. The only remedy against a false witness is a prosecution for perjury.

Where, therefore, a plaintiff sued three defendants for giving false evidence against him in a trial at Bombay, alleging that it was done in pursuance of a conspiracy entered into at Hyderabad to obtain his conviction,

Held, that the plaint disclosed no cause of action.

A mere conspiracy to injure a man without an overt act resulting in the injury does not furnish any cause of action. A conspiracy is not illegal unless it results in an act done which by itself would give a cause of action.

Where in an interlocutory proceeding the order as to costs is that the costs thereof shall be "costs in the cause," these words do not mean that costs will follow the event, but that those costs remain to be dealt with by the Court at the hearing, the Judge at the trial having still power to deal with such costs.

THE plaintiff was a resident at Hyderabad, in the territory of His Highness the Nizám, and the three defendants were also residents at Hyderabad.

In March, 1897, the plaintiff was charged at the Criminal Sessions of the High Court in Bombay, under sections 312, 314 and 109 of the Indian Penal Code (Act XLV of 1860), with having caused the death of one Marion Edith Whittaker at Hyderabad by doing an act with intent to cause miscarriage. The three defendants were witnesses for the prosecution.

At the conclusion of the evidence for the prosecution the jury stopped the case, intimating that they did not desire to hear the defence. A verdict of not guilty was returned, and the plaintiff was discharged.

* Suit No. 390 of 1898, Appeal No. 1089.

The plaintiff filed this suit in the High Court of Bombay claiming "two lákhs of rupees by way of damages for the injury and loss which he has sustained at the hands of the three defendants." In effect the plaint claimed the above sum for damages caused to the plaintiff by the three defendants having conspired to procure his conviction of the above offence in order to screen the second defendant and with having with that object given false evidence at the trial in Bombay.

The plaint set forth at length the circumstances of the case and the conduct of the three defendants in connection therewith, *viz.*, the *post-mortem* examination of the body of the said Marion Edith Whittaker, which was held at Hyderabad, and the inquest which took place there at which the three defendants gave (as the plaintiff alleged) false evidence for the purposes aforesaid. It further stated that, at the trial before the High Court in Bombay, the three defendants falsely and maliciously repeated the evidence given by them on the previous occasions, and copies of their respective depositions were annexed to the plaint. The following paragraphs of the plaint are material:—

"30. The plaintiff charges that in his evidence upon the several occasions hereinbefore referred to, the second defendant has sought, in order to save himself from responsibility, to make out that the plaintiff had procured or assisted the deceased Marion Edith Whittaker in procuring an abortion. The three defendants herein have in collusion with one another fabricated and given upon oath evidence false to the knowledge of all of them. The first and second defendants did in collusion and conspiracy with each other intentionally mislead the two doctors operating at the *post-mortem* examination, and all the three defendants have on the occasions hereinbefore referred to given false evidence with a view of substantiating a false theory as to the cause of the death of the said Marion Edith Whittaker in order to mislead the respective tribunals and to secure the conviction of the plaintiff for complicity in the alleged abortion.

"31. A material part, if not the whole, of the plaintiff's cause of action arose within the ordinary original civil jurisdiction of this Honourable Court inasmuch as the conspiracy between the three defendants herein culminated in giving false and malicious evidence to the peril and prejudice of the plaintiff in his trial at Bombay in March, 1897.

"32. The plaintiff alleges that in consequence of the conspiracy and the evidence hereinbefore referred to, and of the prosecution which was lodged against him (which prosecution it would have been impossible to proceed with in the absence of the evidence given by the third defendant), he has suffered

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injury and loss of an almost irreparable character in his business, his reputation and his social position."

The plaint was presented to the Judge in chambers (Strachey, J.), who gave leave to sue under clause 12 of the Letters Patent.

The defendants filed their written statements. Subsequently an order was made for the trial of the following preliminary issues:—

(1) Whether the plaint discloses a cause of action.

(2) Whether this Court has jurisdiction to try this suit.

These issues were argued before Russell, J.

Macpherson, Inverarity and *Daly* for plaintiff.

Lang (Advocate General) and *Starling* for defendant 1.

Scott and *Young* for defendants 2 and 3.

RUSSELL, J. (after reading the plaint continued:—) The result may be summarised as follows:—

1. Marion Edith Whittaker died of tetanus, the result of an abortion.

2. The three defendants who had attended her in her last illness formed a false theory as to the cause of her illness and death, *viz.*, that the plaintiff was the author of her pregnancy and had caused the abortion.

3. That the second and third defendants collusively took certain steps to conceal the second defendant's malpractices in the case, while the first and second defendants misled the doctors at the *post-mortem* examination.

4. That all the defendants have conspired to falsely secure the conviction of the plaintiff, and in support of such conspiracy have given false evidence.

5. That the plaintiff has sustained heavy damages by the defendants' conduct.

Stated shortly, this suit is for damages caused to the plaintiff by the defendants having combined falsely to procure his conviction of a criminal offence in order to screen the second defendant.

The first question that now arises is, therefore, does the plaint disclose a cause of action? It was argued by the defendants

and admitted by the plaintiff's counsel, that no action for damages will lie against persons who had given false evidence for doing so—*Baboo Gunnesh* v. *Mugneeram*[1]; *Queen-Empress* v. *Baboji*[2]; *Queen-Empress* v. *Balkrishna*[3]; *Nathji* v. *Lalbhai*.[4] It was further argued that no action will lie for conspiracy unless the overt act is itself actionable, and that the gist of the action was the giving false evidence.

But it will be observed, on referring to the paragraphs of the plaint I have referred to, that the defendants are charged with other overt acts than merely having given false evidence.

In dealing with the case as against all the defendants it would appear that the test to be applied is whether the acts complained of would give the plaintiff a right of action against one of them, or, in other words, has the plaintiff sustained a civil injury at the hands of any one of them: see *Huttley* v. *Simmons*.[5] This involves the consideration of the question whether any right of the plaintiff has been infringed. "It is essential to an action in tort," says the Privy Council in *Rogers* v. *Rajendro*,[6] "that the act complained of should under the circumstances be legally wrongful as regards the party complaining; that is, it must prejudicially affect him in some legal right; merely that it will, however directly, do a man harm in his interest, is not enough." What are rights? Cave, J., in *Allen* v. *Flood*[7] says: "The personal rights which we are most familiar with are (1) rights of reputation; (2) rights of bodily safety and freedom; (3) rights of property, or, in other words, rights relative to the mind, body and estate, and if the general word 'estate' is substituted for 'property,' these three rights will be found to embrace all the personal rights that are known to the law." Lord Watson at page 92 of the same report says: "Any invasion of the civil rights of another person is in itself a legal wrong carrying with it liability to repair its necessary or natural consequences in so far as these are injurious to the persons whose right is infringed, whether the motive which prompted it be good, bad or indifferent." Thus

(1) (1872) 11 Beng. L. R. 321.
(2) (1892) 17 Bom. 128.
(3) (1893) 17 Bom. 573.
(4) (1889) 14 Bom. 97.
(5) (1898) 1 Q. B. 181.
(6) (1860) 8 Moo. I. A. 103.
(7) (1898) Ap. Ca. 1 at p. 29.

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the intentional driving away of customers by show of violence—*Tarleton* v. *M'Gawley*,(1) the obstruction of actors on the stage by preconcerted hissing—*Clifford* v. *Brandon*,(2) *Gregory* v. *Duke of Brunswick*,(3) the impeding or threatening servants or workmen—*Garret* v. *Taylor*,(4) the inducing persons under personal contracts to break their contracts—*Bowen* v. *Hall*,(5) *Lumley* v. *Gye*(6)—all are instances of such forbidden acts.

It appears to me that to cause a person to be falsely charged with a criminal offence to the knowledge of the person so causing him to be charged, is an infringement of the personal right of reputation and freedom. At page 114 of Fitzherbert's Natura Brevium, Vol. I, it is said: "If one person of malice and false imagination labour and cause another falsely to be indicted, the party who is so indicted shall not have a writ of conspiracy, &c., but an action upon the case against him who so caused him falsely to be indicted." That being so, it appears to me that each of the defendants is civilly liable to the plaintiff in respect of the acts alleged against them respectively in the plaint other than the giving of evidence against the plaintiff which were done with the object of having the plaintiff falsely indicted. Thus the first and second defendants are charged with giving misleading information to the operating surgeons and with the object of more successfully foisting their false theory as to the cause of death upon the attention of the said surgeons. The first and second defendants or one of them gave a demonstration and a lecture over the body of the deceased lady to a large number of students who were assembled there for the purpose. The first defendant is charged with arranging the *post-mortem* examination so as to prevent any medical man on the part of the plaintiff being present. The second defendant is charged in collusion with the third defendant with having written a letter to the presiding Magistrate with the objects stated in paragraph 14 of the plaint. In paragraph 19 the second defendant is charged with writing another letter to screen himself, but I apprehend that, if only one of the defendants has infringed the personal rights of the plaintiff, the other

(1) (1790) Peak's N. P. Ca. 270.
(2) (1809) 2 Camp. 358.
(3) (1843) 6 M. & G. 205.
(4) Cro. & Jac. 567.
(5) (1881) 6 Q. B. D. 333.
(6) (1853) 2 E. & B. 216.

two who combined towards such infringement would also be held liable.

Treating it as an action against the defendants jointly, I am of opinion that the statement in the plaint discloses a cause of action against them. The plaint charges the defendants with having combined to do certain acts towards the infringement of the plaintiff's rights maliciously, which in its legal sense means a wrongful act done intentionally without a just cause or excuse—*Bromage* v. *Prosser*.(1) The case of *Barber* v. *Lesiter* (2) appears to me to be distinguishable, as there the damage done to the plaintiff did not appear to have been the natural and probable consequence of the defendants' act. In that case Crowder, J., says at page 189 : "The arrest and conviction of the plaintiff seem to have been the result of a combination of circumstances for which the defendant is not in law responsible." Here the damage to the plaintiff is stated to be the direct consequence of the defendants' acts ; so also in *Kearney* v. *Lloyd* (3) the action was held not maintainable because the acts of the defendant did not constitute any legal injury to the plaintiff. In the *Mogul Steamship Co.'s Case* (4) and *Allen* v. *Flood*,(5) the combinations were held not to infringe any legal rights of the plaintiffs, and their action consequently failed. The result is that I am of opinion that the plaint has disclosed a good cause of action against the defendants herein.

The next question that arises is whether this Court has jurisdiction to try the case. Leave to sue under clause 12 of the Letters Patent was granted when the plaint was accepted by Strachey, J. Paragraph 31 of the plaint states how a part of the cause of action is said to have arisen within this jurisdiction. Mr. Macpherson argued that there was a continuing agreement on the part of the defendant to the detriment of the plaintiff, the fruit of which was the evidence given at the Sessions Court in Bombay. I have ascertained from the office of the Clerk of the Crown that the defendants were bound over to give their evidence before the Sessions Court here. The plaint does not

(1) (1825) 4 B. & C. 247.
(2) (1859) 7 C. B. (N.S.) 175.
(3) (1889-90) 26 L. Rep. Ir. 263.
(4) (1892) Ap. Ca. 25.
(5) (1898) Ap. Ca. 1.

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allege that the defendants' agreement continued into this jurisdiction as is suggested. Section 18 of the Civil Procedure Code (Act XIV of 1882) provides as follows :—

"In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local limits of the jurisdiction of one Court, and the defendant resides or carries on business or personally works for gain within the local limits of another Court, the plaintiff may, at his option, sue in either of the said Courts."

The word "wrong" in that section must mean, I apprehend, an actionable wrong. As has been admitted, no action will lie for damage in respect of words spoken by a witness in the witness-box. All that the defendants are alleged to have done to found the jurisdiction is giving false evidence in the Sessions Court in Bombay; but that is not a matter in respect of which the plaintiff is entitled to damages in a Civil Court. The result therefore is that no part of the cause of action has arisen within the jurisdiction, and therefore the suit must be dismissed.

As to costs, I shall be glad to hear counsel on the question, as there have been interlocutory proceedings in the suit, which would have been unnecessary if the plaintiff had at first pressed for these preliminary issues to be decided.

The question of costs was subsequently argued before his Lordship, who gave the following judgment :—

RUSSELL, J.:—As it occurred to me that the summons for the trial of the preliminary issues might have been applied for earlier than it was, and before certain costs had been incurred, I reserved the question of costs for further argument, and it was fully argued before me on the 23rd of January, 1900.

It appears to me that immediately upon the first defendant's written statement being filed on the 21st day of December, 1898, it was open to the plaintiff to have had the question as to whether the plaint disclosed a cause of action and the question of jurisdiction set down for trial on a preliminary issue. The Advocate General, I think, was right in his contention that there was no obligation on the defendants to raise the preliminary issues at all, and it is not the practice in this Court to have the case set down for settlement of issues, although in this instance it will be very desirable to do so.

An interesting argument was raised as to the meaning of the words "costs, costs in the cause," and I am of opinion that these words do not mean that these costs will follow the event, but that those costs remain to be dealt with by the Court at the hearing. In the Court of Chancery, as is well known, costs have always been in the discretion of the Court, and as a general rule costs will follow the result: see *Bartlett* v. *Wood*[1]; *Ferguson* v. *Wilson*.[2] In *Hodges* v. *Hodges*,[3] Jessel, M.R., says: "The dismissal of an action with costs ought to include all costs reserved. I will give instructions to the Registrar always to insert, without any special directions, in all orders made in this branch of the Court the words 'including costs of all applications ordered to stand over until trial and all costs reserved to be disposed of at the trial,' so that it will be for the other side to show why they should not be put in."

But in *British Natural &c. Provident Association* v. *Bywater*,[4] Byrne, J., says: "Where interlocutory applications have been ordered to stand to the trial and are not then mentioned to the Judge, the costs of such applications are to be treated as costs in the action and taxed accordingly, and need not be mentioned in the judgment. Where interlocutory applications have been disposed of, but the costs have been reserved, such costs are not to be mentioned in the judgment, or order, or allowed on taxation, without the special direction of the Judge."

The above expressions "so that it will be for the other side to show why they should not be put in" and "where interlocutory applications have been ordered to stand to the trial and are not then mentioned to the Judge" clearly show that the Judge at the trial has still power to deal with such costs. In *Koosen* v. *Rose*,[5] which Mr. Inverarity brought to my attention, it was held that where, on an application under order 14, the Judge in chambers has made an order as to costs, the Judge at the trial has no jurisdiction to interfere with these costs. But I think that this is a special case, because order 14 specially provides that the Judge in chambers shall deal with the costs. This being so, I have

(1) (1861) 30 L. J. Ch. 614.
(2) (1866) L. R. 2 Ch. 77 at p. 92.
(3) (1877) 25 W. R. 132.
(4) (1897) 2 Ch. 531.
(5) (1897) 45 W. R. 337.

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gone through the proceedings and I have come to the conclusion that the plaintiff must pay all the costs save and except the costs of and incidental to the summons taken out by the second defendant on the 26th June, 1899, calling upon the plaintiff to give security for the costs, which summons was not proceeded with; and also save and except the costs of and incidental to the similar summons taken out on the 9th January, 1900, by the first and third defendants. Save and except these two proceedings, the costs of all the others must follow the result of the case; and I do not think that the second defendant ought to pay the costs of and incidental to the substituted service upon him. The plaintiff opposed the summons to set down the case on preliminary issues and failed on the summons and also on one of the questions raised thereby, and I do not think that there should be any division of costs such as was suggested by Mr. Inverarity. The order for costs will therefore be drawn up in accordance with the above judgment.

The plaintiff appealed. The appeal was heard by Candy and Tyabji, JJ.

Raikes and *Jardine* for appellant (plaintiff).

Lang and *Starling* for respondents Nos. 1 and 3 (defendants Nos. 1 and 3).

Robertson and *Young* for respondent No. 2 (defendant No. 2).

CANDY, J.:—It is unnecessary to recapitulate the introductory facts. The question for our decision may be formulated thus: On the facts recited in the plaint, can it be said that a part of the alleged cause of action arose in Bombay?

The plaintiff says (paragraph 31): "A material part, if not the whole, of the plaintiff's cause of action arose within the ordinary original jurisdiction of this Honourable Court, inasmuch as the conspiracy between the three defendants herein culminated in giving false and malicious evidence to the peril and prejudice of the plaintiff in his trial in Bombay in March, 1897." And again (paragraph 36): "The plaintiff charges that every loss, injury and damage which he has sustained was caused by the conspiracy on the part of the three defendants herein and the

evidence given by them in pursuance thereof." The object of the conspiracy is thus stated (paragraph 30): "All the three defendants have, on the occasions hereinbefore referred to, given false evidence with a view of substantiating a false theory as to the cause of the death of the said Marion Edith Whittaker in order to mislead the respective tribunals and to secure the conviction of the plaintiff for complicity in the alleged abortion."

Now it is admitted that no action will lie against the defendants in respect of the evidence which they gave either at Hyderabad or in the Sessions Court at Bombay. *Primâ facie*, therefore, there is no cause of action arising out of their acts in Bombay, and thus it cannot be said that any part of the cause of action arose in Bombay.

But it is sought to avoid this difficulty by the allegation that the defendants are not sued simply for giving false evidence, but they are sued for the conspiracy by which they conspired together that each one should give false evidence, and as they did give false evidence in Bombay, it follows that they were conspiring in Bombay, and thus there was a cause of action partly arising in Bombay.

The fallacy of this argument lies in supposing that though no action will lie against the defendants for giving false evidence, yet it will lie against them if it be alleged that the false evidence was given in pursuance of a conspiracy. If this argument were good, then though no action would lie against A for giving false evidence, yet, if there were more witnesses than one who gave false evidence against the plaintiff, then an action will lie against A, B, C, &c.; for it is difficult to suppose a case in which it would not follow, as a matter of course, that the witnesses must have given false evidence in pursuance of a conspiracy.

It is impossible by a system of permutation and combination to render of no effect the rule of law, and to say that A is not sued for giving false evidence, but for conspiring with B and C that they should give false evidence, and B is sued &c. The fact is that it is no cause of action that the defendants entered into a conspiracy. You must show that the results of that conspiracy have given a right of action to the plaintiff. This was forcibly

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put in the judgment of Lord Esher in *Salaman* v. *Warner*,[1] and similarly reference may be made to the judgment of Palles, C.B., in *Kearney* v. *Lloyd*,[2] which is, as stated by Darling, J., in *Huttley* v. *Simmons*,[3] to the effect that conspiracy to do certain acts gives a right of action only where the acts agreed to be done, and in fact done, would, had they been without preconcert, have involved a civil injury to the plaintiff.

Now it is clear that the acts done in Bombay by the defendants involved no civil injury to the plaintiff. They involved injury no doubt, but not an injury for which compensation could be recovered in a civil action.

Then it was contended that a part of the cause of action was that part of the damage caused to the plaintiff in Bombay. Assuming that such damage is alleged in the plaint, it is, in my opinion, clear that the fact that any damage was suffered in Bombay would not constitute a part of the cause of action. It may be necessary to prove the fact of injury in Bombay in order to ascertain a full measure of damages; but that fact would not constitute any part of the cause of action. If this argument were sound, actions on account of false evidence would always lie, because, although it cannot be denied that giving false evidence furnishes no cause of action, still there would in every case be the damage, which in reality must be taken to be the only and the whole cause of action.

This argument also fails; and, as frankly admitted by Mr. Raikes, it is impossible to twist this case into one of malicious prosecution; it is simply one of conspiracy to give false evidence; and in my opinion the demurrer was rightly upheld by Mr. Justice Russell. The appeal must be dismissed with costs.

TYABJI, J.:—Two questions have been argued before us. The first is whether the plaint discloses a sufficient cause of action, and the second is whether this Court has jurisdiction to try this suit. These two questions were argued before Russell, J., as two preliminary issues. He found the first in the affirmative and

(1) (1891) 65 Law T. 132. (2) (1889-90) 26 L. R. Ir. 268.
(3) (1898) 1 Q. B. 185.

for the plaintiff and the second in the negative and for the defendants.

The plaint was accepted under clause 12 of the Letters Patent, and the question of jurisdiction therefore depends upon the further question whether any material part of the cause of action accrued within the jurisdiction of the High Court. These two questions, though forming distinct issues, are so connected with, and have such a material bearing upon, each other, that the decision of the one will practically dispose of the other. I will however discuss them in the order in which they were treated by Mr. Justice Russell and were argued before us.

The first question, then, is, does the plaint disclose a sufficient cause of action? Now the plaint is an exceedingly lengthy and intricate document, giving the history of the case in great detail, but the draftsman does not appear to me to have very accurately formulated the exact propositions of fact and law on which he intended to base the plaintiff's right to relief. I think, however, the gist and substance of the allegations in the plaint may be shortly stated as a charge of conspiracy on the part of the defendants to obtain the conviction of the plaintiff of a criminal offence, and to give false evidence in furtherance of that conspiracy. The plaint also asserts that, as a matter of fact, the defendants did give false evidence. The conspiracy is alleged to have taken place at Hyderabad out of the jurisdiction, but the false evidence is stated to have been given in the High Court of Bombay within the jurisdiction. In considering whether these facts give the plaintiff a right to sue the defendants in a civil Court, it is to be remembered that this is not a suit for malicious prosecution. There is no allegation in the plaint that the defendants actually prosecuted the plaintiff. As a matter of fact, the prosecution of the plaintiff in Hyderabad is admitted to have been instituted by His Highness the Nizám's Government. The utmost that is alleged against the defendants is that they desired and furthered and aided the prosecution by conspiring among themselves to give false evidence. The substance of the plaint, then, is that the defendants merely conspired in Hyderabad to give false evidence in order to obtain the plaintiff's conviction — and not that they prosecuted him on a false charge.

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Now I am of opinion that this of itself furnishes no cause of action. A mere conspiracy to injure a man without an overt act resulting in the injury does not furnish any cause of action—*Kearney* v. *Lloyd*(1); *Huttley* v. *Simmons*(2); *Salaman* v. *Warner*.(3) If therefore the plaint had stopped at the mere allegation of the conspiracy, it is clear, on the above authorities, that it would not have disclosed any valid cause of action. Does, then, the fact that false evidence is actually asserted to have been given in pursuance of the conspiracy make any difference? I am clearly of opinion that it does not. It has been held over and over again that the giving of false evidence, no matter how malicious and *mala fide* it may be, furnishes no right to sue in a Civil Court, the only remedy being a prosecution for perjury—*Revis* v. *Smith*(4); *Henderson* v. *Broomhead*(5); *Baboo Gunnesh* v. *Mugneeram*(6); and *Dawkins* v. *Rokeby*.(7) The mere fact that the giving of the false evidence is alleged to be the result of a conspiracy does not, in my opinion, make any difference. I should therefore feel inclined to hold that the plaint does not disclose any cause of action, although there are certain other overt acts alleged—such as the giving (though not as the result of the conspiracy) on the part of the first and second defendants, respectively, a demonstration and lecture, the arranging of the *post-mortem* examination in a manner prejudicial to the plaintiff, the writing of letters to the presiding Magistrate—all of which acts were done out of the jurisdiction of this Court.

It follows from what I have said that, in my opinion, nothing is alleged in the plaint to have taken place in Bombay which could give a valid legal right to the plaintiff to sue the defendants in this Court, and that therefore this suit was rightly dismissed for want of jurisdiction. The vague allegations of counsel in argument that damages and mental anguish may have been caused in Bombay, though not specifically stated in the plaint, do not make any difference. I would dismiss the appeal with costs.

Appeal dismissed.

(1) (1889-90) 26 L. Rep. Ir. 268, 283, 288.
(2) (1898) 1 Q. B. at pp. 184-5.
(3) (1891) 65 L. T., 132, 134, 136.
(4) (1856) 18 C. B. 126.
(5) (1859) 4 H. & N. 569.
(6) (1872) 11 Beng. L. R. 321.
(7) (1875) L. R. 7 Eng. & Ir. Ap. 744.

Attorneys for plaintiff:—Messrs. *Edgelow, Gulabchand and Wadia.*

Attorneys for respondents Nos. 1 and 3:—Messrs. *Crawford, Brown & Co.*

Attorneys for respondent No. 2:—Messrs. *Roughton and Byrne.*

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APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Candy.

HIS HIGHNESS THE GAIKWA'R SIRKA'R OF BARODA AND THE B. B. & C. I. RAILWAY COMPANY (ORIGINAL DEFENDANTS), APPLICANTS, *v.* GHANDI KATCHARABHAI KASTURCHAND (ORIGINAL PLAINTIFF), OPPONENT.*

1899. *September* 6.

Practice—Decree—Appeal—Stay of execution of decree—Civil Procedure Code (Act XIV of 1882), *secs. 545, 546.*

In order to obtain a stay of execution of a decree directing the payment of money the applicant must satisfy the Court on affidavit that substantial loss may result to him unless execution is stayed.

APPLICATION for stay of execution. The plaintiff obtained a decree in the Court of the Subordinate Judge of Ahmedabad for Rs. 17,507 against the defendants as damages sustained by him by reason of their wrongful acts in connection with the construction of a certain railway. The decree further directed the defendants to complete certain "accommodation works" for the passage of water under the said railway.

The defendants appealed. They subsequently obtained a rule *nisi* for stay of execution of the decree pending the appeal. The rule now came on for hearing.

Macpherson (with *Crawford, Brown and Co.*) for the applicants (defendants) in support of the rule.

Brown (with *Matubhai and Jamietram*) for the opponent (plaintiff) showed cause.

* Civil Application, No. 201 of 1899.