

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

1902.
November 11.

SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT),
APPLICANT, v. JANARDAN GANPATRAO (ORIGINAL PLAINTIFF), OPPONENT.*

Privy Council—Appeal to Privy Council—Appeal dismissed for want of prosecution—Costs—Order made by the High Court that the appellant should pay the respondent's costs of application for leave to appeal.

Where an appeal to the Privy Council was dismissed for want of prosecution, the High Court ordered the appellant to pay the respondent's costs of the application for leave to appeal.

Milson v. Carter⁽¹⁾ followed.

APPLICATION for costs in the matter of the appellant's application for leave to appeal to the Privy Council.

On the 22nd April, 1892, the first Court's decree dismissing this suit against the Secretary of State was confirmed by the High Court in appeal.

The plaintiff, thereupon, applied for leave to appeal to the Privy Council, and the Court (Sargent, C.J., and Candy, J.) granted a rule *nisi*, calling on the defendant to show cause why leave should not be granted. The rule was argued before Sargent, C.J., and Telang, J., who, on the 13th February, 1893, made the rule absolute and gave the plaintiff leave to appeal. Their order was as follows:

Rule made absolute and certificate granted under section 600, Civil Procedure Code. Costs of the application to be costs in the appeal.

The plaintiff duly filed his appeal to the Privy Council, but his appeal was dismissed for want of prosecution. The defendant thereupon applied to the High Court (1) that his (defendant's) costs might be taxed and a formal decree be passed directing the plaintiff to pay the same; (2) that in the event of the Court's order of the 13th February, 1893, being considered insufficient in its terms to justify the grant of the above prayer, the said order may be corrected so as to include in it the case of an appeal

* Civil Application No. 420 of 1902.

(1) (1893) Ap. Ca. 638.

"dismissed without further order" under Rule V of the Order in Council of the 13th June, 1853,⁽¹⁾ and then the prayer contained in clause (1) above be granted; and (3) that such other and further relief be granted as may seem meet.

A rule *nisi* was granted calling on the plaintiff to show cause why the above application should not be granted.

Ráo Bahádur *Vasudeo J. Kirtikar* (Government Pleader) appeared for the applicant (defendant) in support of the rule. He relied on *Milson v. Carter*.⁽²⁾

There was no appearance for the opponent (plaintiff).

CHANDAVARKAR, J.:—The order passed by Sir Charles Sargent and Mr. Justice Telang, giving leave to the appellant to appeal to the Privy Council, says that costs should follow the appeal. The Privy Council having dismissed the appeal for want of prosecution, we must, following the authority which the learned Government Pleader cited, viz., *Milson v. Carter*,⁽²⁾ correct the order and make the rule absolute with costs.

The costs claimed by Government are allowed after deducting one anna for the stamp on the application for copies, which item is not admissible.

Rule made absolute.

(1) Rule V of the Order in Council of the 13th June, 1853, runs:

V.—That a certain time be fixed within which it shall be the duty of the appellant or his agent to make such applications for the printing of the transcript and that such time be within the space of six calendar months from the arrival of the transcript and the registration thereof in all matters brought by appeal from Her Majesty's colonies and plantations east of the Cape of Good Hope or from the territories of the East India Company, and within the space of three months in all matters brought by appeal from any other part of Her Majesty's dominions abroad; and that in default of the appellant or his agent taking effectual steps for the prosecution of the appeal within such time or times respectively, the appeal shall stand dismissed without further order, and that a report of the same be made to the Judicial Committee by the Registrar of the Privy Council at their Lordships' next sitting.

(2) (1893) Ap. Ca. 638.

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