

conduct of his son. Assuming it to be the law that the provocation which is contemplated by Section 300 must have proceeded from the person whose death is the subject of the enquiry either by his own acts or by acts of others which he instigated or otherwise abetted, and confining the provocation in this case therefore to the abusive language used by the deceased, we still think that it was grave enough and sudden enough to bring it within the character of that contemplated by the section.

What is required is that it should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. In the present case the abusive language used was of the foulest kind and was addressed to a man already justly enraged by the conduct of the deceased's son. In the circumstances we think the provocation was sufficient to deprive him of his self-control, and shall set aside the conviction of murder and substitute a conviction of culpable homicide not amounting to murder, and sentence prisoner to seven years rigorous imprisonment.

THE EMPRESS  
v.  
KHOGAYI.

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## APPELLATE CIVIL.

*Before Mr. Justice Kernan and Mr. Justice Forbes.*

SUBBRAMANYIAN, PLAINTIFF v. GANAPATHI AND ANOTHER,  
DEFENDANTS.\*

1879.  
January 22.

*Suit in District Munsif's Court, suit filed in Small Cause Court on same day. Election.*

A suit brought in a District Munsif's Court, filed on the same day as a suit for the same amount brought in the same cause of action in the Small Cause Court is not a bar to the maintenance of the Small Cause Suit; but the Plaintiff must elect which suit he will proceed with.

THIS was a case stated by the Judge of the Court of Small Causes at Kumbakonam under Section 617 of Act X of 1877.

The question in this case was whether a suit brought in a District Munsif's Court, filed on the same day as a suit for the

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\* Case No. 6 of 1879, stated under Section 617 of Act X of 1877 by the Judge of the Court of Small Causes at Kumbakonam in Small Cause Suit No. 18 of 1879.

SUBBRAMAN-  
YIAN  
v.  
GANAPATHI.

same-amount brought on the same cause of action on the Small Cause Court side was a bar to the maintenance of the Small Cause suit.

*A. Rámachandráyyar* for the plaintiff

*T. Ráma Ráu* for the defendants.

The Court (KERNAN, J. and FORBES, J.) delivered the following

JUDGMENT :—The question is whether the suit in the Munsif's Court for Rupees 30-8-0 filed the same day as the suit in the Small Cause Court is a bar to the maintenance of the Small Cause Suit. We think it is not. But the Plaintiff must elect which suit he will proceed with, and as he elects to proceed with the Small Cause suit, he is bound to place on the record a relinquishment of the cause of action and suit therefor in the Munsif's Court.

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## APPELLATE CIVIL.

*Before Sir W. Morgan, Kt., Chief Justice, & Mr. Justice Forbes*

1878.  
December 6.

MAYANDI (PLAINTIFF) APPELLANT, v. McUHAE, VICE-PRESIDENT  
OF THE MADURA MUNICIPALITY (DEFENDANT) RESPONDENT.\*

*Municipal Commissioners—Contract—Notice—Madras Act III of 1871, sec. 168.*

A suit was brought to recover from the Municipal Commissioners of Madura the balance of a sum of money due for timber supplied under a contract duly made with them. *Held* that the plaintiff was entitled to sue on the breach of contract without giving notice, such a suit not falling under the provisions of Section 168 of the Towns Improvement Act (III of 1871, Madras).

THE suit was brought against the President of the Municipality of Madura to recover the balance of a sum of money due for timber supplied by the plaintiff for use in the construction of the dispensary at Madura. For the defence it was pleaded that the plaintiff should be non-suited as he did not give the notice prescribed in Section 168 of Madras Act III of 1871.

The District Munsif held that in the present case notice was not necessary and made a decree in plaintiff's favor.

On appeal the Subordinate Judge, holding that Section 168 applied, reversed the Munsif's decree and dismissed the suit.

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\* Second Appeal No. 503 of 1878, against the decree of G. Muttusámi Chetti, Subordinate Judge of Madura, dated 4th April 1877, reversing the decree of the District Munsif of Madura, dated 5th September 1877.