

NOTES.

[JURISDICTION—CIVIL COURTS—

Removal or alteration of namams in a Vaishnavite temple was held to amount to an interference with property and as such suit in respect thereof was cognizable by a Civil Court :—(1906) 30 Mad., 153=17 M. L. J., 1.

But the claim of an individual worshipper to have the procession of an idol carried along his street was not held to be one cognizable by a Civil Court (*per* Chief Justice) :—(1900) 11 M. L. J., 215. See *Contra per* DAVIES, J. in the same case.]

[4 Mad. 317]

ORIGINAL CIVIL.

The 11th November, 1881.

PRESENT :

MR. JUSTICE KERNAN.

IN THE MATTER OF SIVA BUX SAVUNTHARAM.*

Arrest—Privilege of party morando—Civil Procedure Code, Section 642.

Where a native of Patna came from Calcutta to Madras on 24th October on account of a suit pending, in which he was plaintiff, and, the case having been adjourned on 27th October for seven weeks, remained in Madras on account of the suit and was arrested on 10th November :

Held that he was privileged under Section 642 of the Code of Civil Procedure.

MOTION to discharge from custody Siva Bux Savuntharam, the first defendant arrested in execution of the decree in Suit 82 of 1881, on the ground of privilege under Section 642† of the Code of Civil Procedure.

The affidavit upon which this motion was grounded and the examination of Siva Bux Savuntharam showed that he was plaintiff in a suit in the High Court then pending (116 of 1878); that he was a native of Patna; that on receipt of a letter informing him that his presence was required at Madras to prosecute Suit 116 of 1878 he left Calcutta and arrived at Madras on 24th October; that on the 27th October Suit 116 of 1878 having been posted for settlement of issues was adjourned for seven weeks; that he remained in Madras awaiting the disposal of the suit and was not engaged in business at the time of his arrest which took place on the 10th November.

Mr. *Spring Branson* for the Judgment-debtor.

Mr. *Grant* for the Judgment-creditor.

Mr. *Branson*.—The privilege is not the privilege of the person, but of the Court he attends—*Magnay v. Burt* (5 Q. B., 393.)

(KERNAN. J.—A party whose cause is in the list is privileged *evendo, morando et redeundo*).

* In Civil Suit No. 116 of 1878 on the Original Side of the High Court.

†[Sec. 642 :—No Judge, Magistrate or other Judicial officer shall be liable to arrest under this Code while going to, presiding in, or returning from his Court.

And, except as hereinafter provided, the parties to a suit and their pleaders and recognized agents shall be exempt from arrest under this Code while going to or attending a Civil Court for the purpose of such suit and while returning from such Court. Witnesses acting in obedience to a summons shall be similarly exempt.]

[318] The question is one of reasonableness. In re *Soorendro Nath Chowdhry* (I. L. R. 5 Cal., 106); *Childerston v. Barrett* (11 East., 438); *Pitt v. Coomes*, (5 B. A., 1078) *Perse v. Perse* (5 H. L., 671).

Mr. *Grant* referred to Section 642 of the Civil Procedure Code and to *Teil's* case (14 B. L. R., App., 13).

Kernan, J.—I believe the attendance of the defendant is *bonâ fide* on account of the Suit 116 of 1878. I believe he came down in consequence of information, which was correct, that this suit would be struck out if he did not attend. I see no evidence that he had any object in coming here except to attend this suit. Then this suit came on on the 27th of October and was adjourned on his application, I believe, and by the advice of his solicitor, and I have no reason to believe that he had any indirect object in getting the adjournment, but that the application for adjournment was made *bonâ fide* with a view to proceeding in this suit. After that, on the 10th of November, he was arrested. He states that he has no business here and no house, and that he has been merely waiting here on account of this Suit 116 of 1878 and for no other purposes, and that he has been doing so on the advice of his Solicitor; he states he will be ready to go on and have the case heard if the Judge dispenses with the production of his books. Having seen the defendant examined I believe his statement. Under these circumstances I think the defendant is within the principle of privilege as a suitor and I discharge him. No costs.

Solicitors for the Debtor: *Branson* and *Branson*.

Solicitors for the Creditor: *Grant* and *Laing*.

[319] APPELLATE CIVIL.

The 11th November and 5th December, 1881.

PRESENT:

SIR CHARLES A. TURNER, K.T., CHIEF JUSTICE, AND

MR. JUSTICE MUTTUSAMI AYYAR.

Micharaya Guruvu.....(Plaintiff), Appellant

and

Sadasiva Parama Guruvu.....(Defendant), Respondent.*

Civil Procedure Code, Section 526, 522—Finality of decree.

The power to file an award includes the power to inquire if there was a submission to arbitration, and this question is concluded by the decree which is final under Sections 526 and 522 of the Code of Civil Procedure.

THIS suit was brought under Section 525 of the Code of Civil Procedure to file an award made on 29th August 1879, by which the defendant was directed to pay plaintiff Rs. 695-2-0.

The defendant pleaded that no award had been made, and that the agreement to submit to arbitration was forged.

The Munsif finding that the award was genuine, decreed for the plaintiff according to the terms of the award.

The defendant appealed to the District Court.

* C. M. S. A. No. 991 of 1881 against the decree of J. R. Daniel, District Judge of Ganjam, reversing the decree of A. Rama Rau Puntulu, District Munsif of Aska, dated 2nd February 1881.