

Wright (1), *Godwin v. Francis* (2). In cases of indemnity it has been so held in many cases: *Duffield v. Scott* (3), *Penley v. Watts* (4), *Smith v. Compton* (5), *Howard v. Lovegrove* (6).

In the present case I think the costs incurred by the Administrator-General in the suit by Burnomoye, and those incurred by the present plaintiff in the suit by the Administrator-General against him, were reasonably and properly incurred, I therefore find as to the third issue, that the plaintiff is entitled to recover from the defendant the sums of Rs. 6,932-12-11, Rs. 997-7-6, and Rs. 1,028-9, with costs on scale No. 2.

Judgment for plaintiff.

Attorney for the plaintiff: Baboo *Nobin Chunder Burrel*.

Attorney for the defendants: Baboo *Gunesh Chunder Chunder*.

Before Mr. Justice Wilson.

DOORGA CHURN DOSS v. NITTOKALLY DOSSEE AND OTHERS.

1880
March 11, 15.

Practice—Defence in Formâ Pauperis—Civil Procedure Code (Act X of 1877), chap. xxvi.

Although chap. xxvi of the Civil Procedure Code only provides for suits to be brought by a pauper, the Court has power to allow a defendant to defend *in formâ pauperis*.

THIS was a suit for the restitution of conjugal rights. The father of the defendant Nitokally Dossee presented a petition asking for leave to defend the suit *in formâ pauperis*. Notice of the intended application was served upon the Government.

Mr. *Souttar* for the plaintiff contended, that, as there is no provision in the Code which enables the Court to allow a defendant to defend *in formâ pauperis*, chap. xxvi of the Code applying only to suits by paupers, it was evidently not the

(1) 7 E. & B., 301; S. O. on appeal, (4) 7 M. and W., 801, *per Parke*, 8 E. & B., 647. B., at p. 609.

(2) L. R., 5 C. P., 295.

(5) 3 B. and Ad., 407.

(3) 3 T. R., 374.

(6) L. R., 6 Ex., 43.

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DOSSIE.

intention of the Legislature to allow a pauper defendant the privileges accorded to a pauper plaintiff.

Mr. J. D. Bell for the Government contended, that Government should not be called upon to appear, but should only be called upon when a plaintiff seeks to institute a suit in order to see that the revenue is not defrauded. He also contended that there the Court has no power under the Code to allow a defendant to appear *in formâ pauperis*. [WILSON, J.—The Code binds the Court so far as it goes, but if the Court had power before the Code was passed to allow a defendant to appear *in formâ pauperis*, and that power is not expressly taken away by the Code, the power must remain. In Courts of Common Law the defendant was not allowed to defend *in formâ pauperis*, because the power was statutory; but in the Court of Chancery, the defendant was allowed so to defend because the power was not statutory.]

March 15th.—On this day the Court made an order allowing the defendant to defend the suit *in formâ pauperis*.

Application granted.

Attorney for the plaintiff: Mr. Moses.

APPELLATE CIVIL.

Before Mr. Justice Prinsap and Mr. Justice Maclean.

1880
March 1.

NOBAN NUSYA AND ANOTHER (DEFENDANTS) v. DHON MAHOMED
(PLAINTIFF).*

Registration—Period within which Document may be registered—Conduct of Parties—Registration Act (III of 1877), s. 17, cl. b, and ss. 23, 77.

By an agreement entered into between the parties, the vendor bound himself to execute within thirty days a deed of conveyance, and in default that the agreement should be considered as itself the deed of conveyance of certain

* Appeal from Order, No. 183 of 1879, against the order of F. J. G. Campbell, Esq., Officiating Judge of Rungpore, dated the 25th June 1879, reversing the order of Baboo Kartick Chunder Pal, Munsif of Nilphamari, dated the 7th of December 1878, remanding the case to the Munsif.