

The minor cannot be made personally responsible for the act or defaults of his guardian or of the first and second defendants. SAMAYYA  
v.  
NAGALINGAM.

We think the proper decree as to costs is that all parties do bear their own costs throughout. We shall modify the decree of the Lower Appellate Court accordingly. We make no order as to costs of the memorandum of objections.

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## APPELLATE CIVIL.

*Before Mr. Justice Parker and Mr. Justice Wilkinson.*

OAKSHOTT AND OTHERS (PLAINTIFFS),

v.

THE BRITISH INDIA STEAM NAVIGATION COMPANY  
(LIMITED), (DEFENDANTS.) \*

1891.  
Dec. 4, 8.

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*Presidency Small Cause Courts Act—Act XV of 1882, ss. 37, 69—Application to Full Bench for retrial—Case stated.*

The full bench of a Presidency Court of Small Causes cannot state a case for the opinion of the High Court on an application for a new trial made under Act XV of 1882, s. 37.

CASE stated under section 69 of Act XV of 1882 and section 617 of the Civil Procedure Code by the Judges of the Court of Small Causes, Madras, in small cause suit No. 22581 of 1890 on their file.

The *Acting Advocate-General* (Hon. Mr. Wedderburn) for plaintiffs.

Mr. K. Brown for defendants.

JUDGMENT.—The first question referred to us by the full bench of the Small Cause Court is whether a hearing of an application for a new trial by a full bench under section 37 of the Presidency Small Cause Act XV of 1882 can be said to be the hearing of a suit within the meaning of section 69 of the said Act, so as to entitle the Court to state a case for the opinion of the High Court either on its own motion or at the requisition of either party.

Section 69 of the Presidency Small Cause Act provides for a reference to the High Court in two cases (1) when two or more

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\* Referred Case No. 32 of 1891.

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COMPANY.

Judges sit together in any suit and differ in their opinion as to any question of law or usage having the force of law, and (2) if any such question arises in any suit in which the subject-matter is over Rs. 500 in value and either party requires such reference. The concluding clause of the section provides for the course to be adopted by the Court in both of the above cases: it is to draw up a statement for the opinion of the High Court of the facts of the case, and either postpone judgment or deliver judgment contingent upon such opinion.

It was urged by the learned counsel for the defendant company that the words "in any suit" were wide enough to include an application for a new trial under section 37, and we were referred to the judgment of Sir Barnes Peacock in *Ishan Chander Singh v. Haran Sirdar*(1), in which it was ruled that an application for a new trial under the Mofussil Small Cause Act XI of 1865 was a point in the proceedings previous to the hearing of a suit within the meaning of section 1, Act X of 1867, and that the opinion of the High Court upon a question of law could be asked for upon such an application, *per contra* we were referred by the learned Advocate-General to the remarks of Sargeant, C.J., and Farran, J., in *Ralli Brothers v. Goculbhai Mulchand* (2.)

The language used in section 1, Act X of 1867, appears to us clearly distinguishable from that used in section 69, Act XV of 1882. Although an application for a new trial may undoubtedly be "a point in the proceedings previous to the hearing of a suit," yet the words "in any suit" in the later Act appear to presuppose that a suit is actually pending. If the application for a new trial is rejected, the suit is not revived, and it becomes impossible to give effect to the direction in the last clause of section 69, viz., to reserve judgment or give judgment contingent upon such opinion. We are fortified in this opinion by the fact that the High Court of Calcutta has taken a similar view in *Nusserwanjee v. Pursutum Doss*(3), in which it was held, following the principle laid down in *Hall v. Joachim*(4), that if in hearing an application for a new trial the Judges thought it advisable to take the opinion of the High Court, their proper course was to grant a new trial, so that the point could be properly

(1) 11 W.R., 525.

(2) I.L.R., 15 Bom., 376.

(3) I.L.R., 11 Cal., 298.

(4) 12 B.L.R., 34.

raised. In an application for a new trial no judgment could be given which would be a contingent judgment within the meaning of the Presidency Small Cause Act. We must answer the first question referred to us in the negative. We cannot, therefore, consider the other points referred. Costs in this Court to follow the result of the reference.

*Champion & Short*—Attorneys for plaintiffs.

*Barclay, Morgan & Orr*—Attorneys for defendants.

CAKSHOTT  
v.  
THE BRITISH  
INDIA STEAM  
NAVIGATION  
COMPANY.

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## APPELLATE CIVIL.

*Before Mr. Justice Wilkinson and Mr. Justice Shephard.*

KERALA VARMA (PLAINTIFF), APPELLANT,

v.

CHADAYAN KUTTI AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1891.  
Nov. 12.

*Court Fees Act—Act VII of 1870, s. 10, cl. II; s. 12, cl. II.*

The plaintiff sued four persons to recover, with arrears of rent, possession of three parcels of land and obtained a decree in the Court of a District Munsif. The suit was valued at Rs. 489-8-0. Defendant No. 4, who claimed to be entitled as jenni to one of the parcels, preferred an appeal. The District Judge held that the suit should have been valued at Rs. 1,164-8-0, and he made an order that additional Court Fees should be paid accordingly; the order not having been complied with, he made an order "original suit rejected." He subsequently referred the appeal for disposal to a Subordinate Judge, who accordingly passed a decree, allowing the appeal of defendant No. 4 with costs. On appeal against the above order and decree :

*Held*, that the order of the District Judge was irregular and the appeal should be restored to the file of the Subordinate Judge to be disposed of according to law.

SECOND APPEALS against the order and decrees of J. P. Fiddian, Acting District Judge of North Malabar, and of C. Gopalan Nayar, Subordinate Judge of North Malabar, in appeal suit No. 278 of 1889, being an appeal against the decree of S. Subramanya Ayyar, District Munsif of Cannanore, in original suit No. 278 of 1889.

The plaintiff sued four defendants to recover, with arrears of rent, three parcels of land demised to the karnavan of defendants

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\* Second Appeals Nos. 1252 of 1890 and 527 of 1891.