

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Shephard.

FISCHER (PLAINTIFF),

v.

TURNER, COLLECTOR OF MADURA AND AGENT TO THE
SECRETARY OF STATE FOR INDIA IN COUNCIL
(DEFENDANT).*

1891.
December 1.

Provincial Small Cause Courts Act—Act IX of 1887, s. 15, sched. II, art. 41.

The plaintiff sued to recover from the defendant Rs. 227, being his share of the cost of repairing a channel, which was the property of the plaintiff and defendant :

Held, the suit was cognizable by a Court of Small Causes.

CASE referred for the decision of the High Court under Code of Civil Procedure, s. 646B., by T. Weir, District Judge of Madura.

The case was stated as follows :—

“ I have the honor to submit to the High Court the record in
“ small cause suit No. 593 of 1890 on the file of the Subordinate
“ Court, Madura (West), in which the Subordinate Judge has, I
“ consider, failed to exercise a jurisdiction vested in him by law.

“ The suit is to recover from defendant Rs. 227-9-6, being
“ his share of the cost of repairing in faslis 1297, 1298 and 1299,
“ a channel which is the joint property of plaintiff and defendant.

“ The Subordinate Judge has held that the suit falls under
“ article 41 of the second schedule of the Provincial Small Cause
“ Courts Act.

“ The present suit is of the very same nature as original suit
“ No. 59 of 1888 on the file of the Madura Munsif's Court and
“ between the same parties. One of the issues in that suit was—
“ ‘ Has the Court jurisdiction in this case on its original side ? ’
“ The Munsif thought the suit was cognizable on the small cause
“ side and returned the plaint for presentation on that side ; but
“ he took it back on the original side under section 23 of the Act
“ as questions of title were raised. The suit was then registered
“ in original suit No. 158 of 1889. In their judgment, dated 19th
“ January 1891, in *The Secretary of State for India in Council v.*
“ *Fischer*(1) which arose from the said suit, their Lordships have

* Referred Case No. 26 of 1891. (1) Second Appeal No. 598 of 1890 unreported.

FISCHER
v.
TURNER,
COLLECTOR OF
MADURA AND
AGENT TO THE
SECRETARY
OF STATE FOR
INDIA IN
COUNCIL.

“ remarked as follows :— ‘ The suit is of a nature cognizable in a
“ Court of Small Causes, although the District Munsif acting
“ under section 23 of Act IX of 1887 very rightly directed that
“ the plaint should be presented to a Court having jurisdiction to
“ determine a question of title which arose in the suit.’ I am of
“ opinion that, in the face of the above ruling, the Subordinate
“ Judge’s order holding that the present suit is not cognizable on
“ the small cause side is erroneous and should be set aside, and
“ the plaint ordered to be received on the small cause side of the
“ Subordinate Court.

“ It should be stated that this reference is made at the instance
“ of the plaintiff and is rendered necessary by the circumstance
“ that the District Munsif of Madura rejected the plaint when
“ presented on the regular side, being of opinion that the suit was
“ cognizable as a small cause suit.”

Counsel were not instructed.

JUDGMENT.—The suit is cognizable by a Small Cause Court.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Wilkinson.*

QUEEN-EMPRESS

v.

KRISHTNAYYAN.*

Forest Act—Act V of 1882 (Madras), s. 21 (d) — Grazing cattle in a forest reserve.

The owner of cattle found grazing in a forest reserve cannot be convicted under Madras Forest Act, s. 21 (d), in the absence of evidence that he either pastured the cattle or permitted them to trespass in the reserve.

CASE reported for the orders of the High Court under Criminal Procedure Code, s. 438, by W. J. Tate, Acting District Magistrate of Coimbatore.

Counsel were not instructed.

JUDGMENT.—To sustain a conviction under section 21 (d) of the Forest Act there must be some evidence either that defendant

* Criminal Revision Case No. 398 of 1891.