

“that the amount of the consideration was falsely stated in the deed, he should take action with a view to prosecute the offenders under section 63.

REFERENCE  
UNDER STAMP  
ACT, SECTION  
46.

“The penalty levied in the case was ordered to be refunded.

“The Collector now reports that the parties concerned in the above case were prosecuted, but were acquitted, as it was very doubtful that there was an undervaluation fraudulently made for the purpose of depriving Government of stamp duty; that although the property was worth about Rs. 10,000, the vendor had not possession of it, and it had been sold to the vendee for the small sum of Rs. 3,000, as it was probable that protracted litigation with a certain individual who held possession of the lands would be necessary before the vendee could get possession of them.

“Under the circumstances the Board considers that the petitioners are entitled to a refund of the deficient stamp duty erroneously levied, and solicits the orders of the Honourable the Judges of the High Court, as the Board has no power to sanction it.”

*Venkatarama Surma* for vendors.

OPINION.—We are of opinion that the proper stamp duty leviable on the conveyance was Rs. 30, that being the amount payable on the consideration as set forth therein.

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## APPELLATE CIVIL.

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

SAMINATHA AYYAN (DEFENDANT), APPELLANT,

v.

MANGALATHAMMAL (PLAINTIFF), RESPONDENT.\*

*Provincial Small Cause Courts Act—Act IX of 1887, Sched. II, Art. 38—  
Suit for arrears of maintenance.*

A suit for arrears of maintenance payable under a written agreement does not lie in a Provincial Small Cause Court.

1896.  
September  
28.

SAMINATHA  
 AYYAN  
 v.  
 MANGALA-  
 THAMMAL.

SECOND APPEAL against the decree of V. Srinivasa Charlu, Subordinate Judge of Kumbakonam, in appeal suit No. 540 of 1894, reversing the decree of J. C. Fernandez, District Munsif of Shiyali, in original suit No. 99 of 1894.

The facts of this case as set forth in the District Munsif's judgment were as follows:—

“The plaintiff sues to recover from defendant Rs. 138-0-6, being maintenance with interest thereon alleged to be due under an agreement executed to her by defendant's deceased father and three others on the 19th May 1874, undertaking to pay her maintenance at the rate of Rs. 7 per month. The maintenance claimed is alleged to be due for defendant's father's one-fourth share from the 20th May 1889 up to the date of the plaint.

“The defendant pleads that plaintiff has no right under the agreement sued on to claim separately defendant's father's share of the maintenance stipulated for, and that plaintiff has no cause of action against him as he did not derive any assets from his father.”

The District Munsif dismissed the suit with costs.

On appeal the Subordinate Judge gave the plaintiff a decree against the defendant as the legal representative of his father deceased.

Defendant appealed.

*Krishnasami Ayyar* for appellant.

*Sundara Ayyar* for respondent.

JUDGMENT.—A preliminary objection is raised that no second appeal lies in this case inasmuch as the suit is one for Rs. 138-0-6, and is of a nature cognizable by a Court of Small Causes. The suit is to recover the above sum under an agreement, exhibit A, whereby the defendant's father and others promised to pay maintenance at the rate of Rs. 7 per mensem to the plaintiff. In other words, it is a suit to recover arrears of maintenance fixed by contract at a certain monthly sum.

We are of opinion that this is “a suit relating to maintenance” and therefore excluded from the jurisdiction of a Small Cause Court (article 38, schedule 2, Act IX of 1887). It is argued that the decision in *Komu v. Krishna*(1) is an authority opposed to this view; but we observe that this is not so, for that case was

(1) I.L.R., 11 Mad., 134.

decided under the law (Act XI of 1865) in force before Act IX of 1887 was passed, and the terms of that Act were quite different from those of the present Act.

SAMINATHA  
 AYYAN  
 v.  
 MANGALA-  
 THAMMAL.

Under the old Act certain suits relating to maintenance, viz., those for maintenance claimed on a special bond or contract had been decided by the Courts to be cognizable by a Court of Small Causes, while suits to determine the amount of maintenance had been decided not to be so cognizable (*Sidlingapa v. Sidara Kom Sidlingapa*(1), *Nuribi v. Husen Lal*(2)). The language of the present Act was apparently adopted so as to exclude from the cognizance of the Small Cause Court suits for maintenance claimed on a special bond or contract, which, under the former law, were held to be triable by a Small Cause Court (*Bhagvantrao v. Ganpatrao*(3)).

We, therefore, disallow the preliminary objection. On the merits the only ground of appeal argued before us is that, as there is no proof that the defendant received assets from his father, the suit against him personally ought to have been dismissed. We observe that the decree is merely against the defendant as the legal representative of his late father, and such decree can only be executed against assets of the father in defendant's hands. The second appeal fails and is dismissed with costs.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Boddam.*

QUEEN-EMPRESS

*v.*

KRISHTAPPA.\*

1896.  
 October 16.

*Penal Code, s. 174—Non-attendance in obedience to an order of a public servant—  
 Absence of public servant.*

The offence contemplated by s. 174, Penal Code, is an omission to appear at a particular time and at a particular place before a specified public functionary. Where therefore the public servant was absent on the date fixed in a summons:

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(1) I.L.R., 2 Bom., 624. (2) I.L.R., 7 Bom., 537. (3) I.L.R., 16 Bom., 267.

\* Criminal Revision Case No. 415 of 1896.