In our opinion they do not. They clearly do not amount to a criminal prosecution of the respondent; but they are proceedings preliminary to it, which are necessitated under the provisions of the Criminal Procedure Code, but which need not, and did not, result in a prosecution. There has been no loss and injury, and no loss was entailed on the respondent by the act of the appellant in applying for leave to prosecute the respondent. The only loss which the respondent can show he suffered was in the expense he was put to in employing counsel to appear in the Court in answer to the applications. *But this did not necessarily result from the appellant's* applications. The appellant did not cause him to be summoned, and any appearance he put in was due to the fact that he had through his counsel asked that he should have notice of any such application, anticipating that it might be made. We are of opinion that under these circumstances the plaintiff-respondent cannot recover damages.

We set aside the decrees of the lower Courts and dismiss the suit with all costs.

Appeal allowed.

FULL BENCH.

1886
November 15.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.

GHANSHAM SINGH (APPLICANT) v. LAL SINGH (OPPOSITE PARTY).*

Review of judgment—Omission to serve notice of hearing of appeal upon applicant—Civil Procedure Code, s. 623—"Any other sufficient reason"—Practice—Notice to show cause—Right to begin.

An appeal which was referred to the Full Bench for disposal was heard and determined by the Full Bench and judgment given in favour of the appellant in the absence of the respondent. Subsequently the respondent applied for a review of judgment and proved that his absence at the hearing before the Full Bench was due to a mistake which had been made in not serving him with notice of the reference.

Held by the Full Bench that, under the circumstances, the applicant's absence at the hearing came within the words "any other sufficient reason" in s. 623 of the Civil Procedure Code, and the review should be granted and the appeal re-heard.

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* Application No. 68 of 1886 for review of judgment in S. A. No. 1468 of 1884.

1886

GHANSHAM SINGH v. LAL SINGH.

Upon the hearing of an application for review of judgment, upon which an order has been passed directing the opposite party to show cause why the application should not be granted, counsel for the opposite party should begin.

THIS was an application for review of a judgment of the Full Bench of the Court by the respondent in S. A. No. 1468 of 1884. The applicant stated as follows :—

"1. That on the 26th October, 1885, the said second appeal (No. 1468 of 1884) was heard by a Division Bench of this Honourable Court consisting of the then Chief Justice and Mr. Justice Brodhurst. Judgment was reserved, and on the 12th November, 1885, owing to a difference of opinion, the appeal was referred to the Full Bench for decision.

"2. That no notice of such reference was given to your petitioner, and he did not therefore instruct counsel to appear for him.

"3. That on the 21st January, 1886, the said appeal was disposed of by the Full Bench in the absence of your petitioner, and judgment was given, reversing the two concurrent decrees of the lower Courts.

"4. That your petitioner is advised that the judgment of this Honourable Court is erroneous upon the following (among other) grounds :—

"(a) That the suit is barred by the Limitation Act.

"(b) That independently of the evidence on the record referred to in the judgment of this Honourable Court, there is other evidence on the record which goes to support the case of the defendant-respondent, to which (owing to the petitioner not being represented by counsel at the hearing of the appeal) the attention of this Honourable Court would seem not to have been directed.

"Your petitioner therefore prays that, with reference to the provisions of s. 622 of the Civil Procedure Code, this Honourable Court will review its judgment of the 21st January, 1886, and restore the decrees of the lower Courts, or pass such other order in the premises as to this Honourable Court may seem fit."

On the 5th November, 1886, the Full Bench ordered that notice should issue to the opposite party to show cause why the application should not be granted. On the 15th November the application came before the Full Bench for disposal.

Mr. *G. E. A. Ross* and Mr. *T. Conlan*, for the applicant.

Pandit *Ajudhia Nath*, for the opposite party.

Upon the case being called on for hearing Pandit *Ajudhia Nath* claimed to be entitled to begin, on the ground that notice had been issued to him to show cause against the application.

Mr. *G. E. A. Ross* said that the practice of the Court in reference to this point was not definitely settled. He left the matter, without argument upon it, in the hands of their Lordships.

The Court said that Pandit *Ajudhia Nath* had better begin.

The application for review of judgment was then heard.

Pandit *Ajudhia Nath*, for the opposite party.—The applicant cannot apply for a review of judgment, as the remedy provided is an application for the re-hearing of the appeal. The application must be treated as one for the re-hearing of an appeal heard *ex parte* in the absence of the respondent. As such it is barred by limitation, having been made more than thirty days after the date of the decree in appeal. If the application is taken to be one for review of judgment, then the absence of the applicant at the hearing of the appeal is not a "sufficient reason" for granting the review, within the meaning of s. 623 of the Civil Procedure Code. He referred to *Kishna Ram* v. *Rukmin Sewak* (1) and *Sheo Ratan* v. *Lappu Kuar* (2)

Mr. *Ross*, for the applicant, contended that the mere fact that the applicant had not received notice of the reference and the appeal had been decided in his absence was "sufficient reason." He referred to *Bibi Mutto* v. *Ilahi Begam* (3) and *Ajudhia Prasad* v. *Balmukand* (4), contending that the applicant might apply for review of judgment, and was not bound to apply for a re-hearing of the appeal.

EDGE, C. J.—The applicant for review of judgment in this case was absent at the hearing before the Full Bench, and we are satisfied that his absence is accounted for by a mistake which was made in not serving him with notice of that hearing. We are of opinion that, under the circumstances, the applicant's absence at the hearing comes within the words "any other sufficient reason" used in s. 623 of the Civil Procedure Code. The review of

(1) Weekly Notes, 1882, p. 102.
(2) I. L. R., 5 All. 14.
(3) I. L. R., 6 All. 65.
(4) I. L. R., 8 All. 354.

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GHANSHAM SINGH v. LAL SINGH.

judgment is granted, and the appeal will be restored to the file of pending appeals and heard before the Full Bench. Let next Saturday week be fixed for the hearing and notices issue to the parties.

STRAIGHT, OLDFIELD, BRODHURST, and TYRRELL, JJ., concurred.

Application granted.

APPELLATE CIVIL.

1886
November 15

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

JANKI (APPELLANT) v. THE COLLECTOR OF ALLAHABAD (RESPONDENT).*

Pauper suit—Court-fees, recovery of, by Government—Execution of decree—Cross-decrees—Cross-claims under same decree—Civil Procedure Code, ss. 244 (c), 246, 247, 411.

Held that a Collector applying on behalf of Government under s. 411 of the Civil Procedure Code, for recovery of court-fees by attachment of a sum of money payable under a decree to a plaintiff suing *in formâ pauperis*, might be deemed to have been a party to the suit in which the decree was passed, within the meaning of s. 244 (c) of the Code, and that an appeal would, therefore, lie from an order granting such application.

A plaintiff suing *in formâ pauperis* to recover property valued at Rs. 60,000 obtained a decree for Rs. 1,439. The Court, with reference to the provisions of s. 411 of the Civil Procedure Code, directed that the plaintiff should pay Rs. 1,196 as the amount of court-fees which would have been paid by him if he had not been permitted to sue as a pauper. The Collector having applied under s. 411 to recover this amount by attachment of the Rs. 1,439 payable to the plaintiff, the defendant objected that (i) certain costs payable to her by the plaintiff under the same decree, and (ii) a sum of money payable to her by the plaintiff under a decree which she had obtained in a cross-suit in the same Court, should be set-off against the Rs. 1,439 payable by her to him, with reference to ss. 246 and 249 of the Code, and that thus nothing would remain due by her which the Government could recover. No application for execution was made by the plaintiff for his Rs. 1,439, or by the defendant for her costs. In appeal from an order allowing the Collector's application, it was contended that the "subject-matter of the suit" in s. 411 of the Code meant the sum which the successful pauper-plaintiff is entitled to get as a result of his success in the suit; but that in the suit and the cross-suit taken together, the plaintiff ultimately stood to lose a small sum, the defendant being the holder of the larger sum awarded altogether.

Held that the contention had no force, as execution had not been taken out by the plaintiff or the defendant or both, and it could not be said that the Government had been trying to execute the plaintiff's decree, or was a representative of the plaintiff as holder of the decretal order in his favour for Rs. 1,439, so as to

* First Appeal No. 154 of 1886, from an order of Pandit Bansidhar, Subordinate Judge of Allahabad, dated the 15th March, 1886.