

CIVIL JURISDICTION.

1881
April 11*Before Mr. Justice Oldfield and Mr. Justice Straight.*

DEBI-SINGH (DEFENDANT) v. HANUMAN UPADHYA (PLAINTIFF).*

Jurisdiction of Small Cause Court—Compensation for personal injury—Actual pecuniary damage—Act XI of 1865, ss. 6 (3), 12.

The plaintiff in a suit for compensation for malicious prosecution claimed Rs. 200 as compensation for the mental annoyance caused him by such prosecution, and Rs. 25 the actual expense incurred by him in defending himself from the charge made against him. *Held*, with reference to s. 6 (3) and s. 12 of Act XI of 1865, that, the suit being one for the recovery of damages on account of an alleged personal injury, from which actual pecuniary damage had resulted, it was cognizable and should have been instituted in the Court of Small Causes having local jurisdiction. *Gunga Narain v. Gudadhur Chowdhry* (1) and *Brojo S. ontur v. Eshan Chunder* (2) followed.

THE plaintiff in this suit stated in the plaint that on the 2nd April, 1880, the defendant falsely charged him and one Jageshar Singh with the theft of certain property, in consequence of which he and Jageshar Singh were arrested and kept in custody for ten days; that the said charge was preferred maliciously and without any reasonable or probable cause, by way of revenge, the plaintiff having been appointed to a post from which the defendant's cousin had been dismissed; that on inquiry the said charge was found to be false, and the plaintiff was acquitted on the 12th April, 1880; and that the result of the false charge preferred by the defendant against the plaintiff was that he, plaintiff, had to spend a large sum of money in defending himself, in addition to the mental annoyance and loss of reputation which it had caused him. The plaintiff claimed Rs. 225 damages, being Rs. 200 compensation for mental annoyance and loss of reputation, and Rs. 25 the costs incurred by him in defending himself in the Criminal Court. The suit was instituted in the Court of the Munsif of Benares. The Munsif gave the plaintiff a decree for Rs. 35, being Rs. 10 compensation for the mental annoyance and loss of reputation caused

* Application, No. 17B of 1881, for revision under s. 622 of Act X of 1877 of a decree of M. Brodhurst, Esq., Judge of Benares, dated the 1st December, 1880, affirming a decree of Babu Mrittonjoy Mukarji, Munsif of Benares, dated the 30th July, 1880.

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to the plaintiff, and Rs. 25 the costs incurred by him in defending himself in the Criminal Court. On appeal by the defendant the lower appellate Court affirmed the Munsif's decree.

The defendant applied to the High Court to revise the decrees of the lower Courts under s. 622 of Act X of 1877, on the ground that the suit was not cognizable in the lower Courts, but in the Court of Small Causes at Benares, the claim being one for compensation for a personal injury from which actual pecuniary damages had resulted, and the demand being under Rs. 500.

Mr. *Spankie*, for the defendant, in support of the application, cited *Gunga Narain v. Gudaadur Chowdhry* (1) and *Brojo Soondur v. Eshan Chunder* (2).

Munshi *Kashi Prasad*, for the defendant.

The judgment of the High Court (OLDFIELD, J., and STRAIGHT, J.,) was delivered by

STRAIGHT, J.—This is an application for revision under s. 622 of the Civil Procedure Code. The circumstances under which it is made are as follows :—

One Hanuman Upadhy brought a suit in the Court of the Munsif of Benares to recover damages for malicious prosecution ; Rs. 200 in respect of the mental annoyance caused him, and Rs. 25, money actually out of pocket, for costs incurred by him in employing mukhtars in the Criminal Court to defend him. The Munsif decreed the claim, awarding damages under the first head at Rs. 10, and under the second giving the amount claimed in full. This decision the Judge of Benares in appeal upheld. The defendant Debi Singh now applies to this Court to set aside the whole of these proceedings on the ground that the plaintiff's suit was exclusively cognizable by the Small Cause Court, and that the Munsif had no jurisdiction to entertain it. The objection was not urged in either of the lower Courts, but being directly based upon the provisions of s. 622 of the Civil Procedure Code, we cannot refuse to take notice of it. We are of opinion that it is a well-founded one and must prevail, for it appears to us that,

having regard to the language of s. 6, sub-section (3), and s. 12 of Act XI of 1865, the plaintiff's suit should have been instituted in the Small Cause Court. By his plaint he in clear terms alleged, and by distinct and positive evidence proved, actual pecuniary damage to the extent of Rs. 25, as the direct consequence of the wrongful act of the plaintiff. This claim therefore was in respect of a personal injury from which actual and ascertained pecuniary damage had resulted and it clearly fell within the terms of s. 6, sub-section (3) of Act XI of 1865. He was therefore bound by the provisions of that Act to bring his suit in the Small Cause Court, which, the condition precedent to giving it jurisdiction under the head of "actual pecuniary damage" being satisfied, necessarily had the power to entertain and dispose of the general question of damage raised under the other head. This view has been expressed in two Calcutta rulings—*Gunga Narain v. Gudadhur Chowdhry* (1) and *Brojo Soondur v. Eshan Chunder* (2)—and in the opinions therein enunciated we coincide

We must accordingly allow this application for revision and set aside all the proceedings hitherto had as having been held without jurisdiction. The plaint will be returned to the respondent, Hanuman Upadhyaya, in order that he may present it in the Small Cause Court. Each party will pay his own costs on this application.

Application allowed.

CRIMINAL JURISDICTION.

1331
April 12,

Before Mr. Justice Straight.

IN THE MATTER OF THE PETITION OF UMRAO SINGH v. FAKIR CHAND.

*Magistrate of the District—Power to withdraw or refer cases—Act X of 1872
(Criminal Procedure Code), s. 47.*

Magistrates of Districts should exercise the powers conferred on them by s. 47 of Act X of 1872 only when it is absolutely necessary for the interests of justice that they should do so; and when one of the parties to a case applies to have it withdrawn from the Magistrate inquiring into or trying it and referred to another Magistrate, the Magistrate of the District should give the other party notice of such application, and an opportunity of showing cause why such application should not be granted.

(1) 13 W. R. 434. (2) 15 W. R. 179.