

1880

ISHORCHAND
CHAMPA'LA'L
v.
MA'DHOWJI
VISRA'M.

The following cases were cited by counsel:—*Blake v. Apple-
yard*⁽¹⁾, *Neale v. Clarke*⁽²⁾, *Potter v. Chambers*⁽³⁾, *Myers v.
Defries*⁽⁴⁾, *Walesby v. Goulston*⁽⁵⁾.

MARRIOTT, J.—I think the section of the Act does not apply to such a case as this, and that the plaintiff is entitled to his costs. He has proved himself to be entitled to recover Rs. 1,241, and against this sum he was not bound to admit the amount claimed by the defendant. The defendant has proved his set-off, but there was no obligation upon the plaintiff to admit the claim. This, however, he must have done in order to bring his suit within the jurisdiction of the Small Cause Court.

Judgment for the plaintiff.

Attorney for the plaintiff.—Mr. *Janardhan Gopal*.

Attorneys for the defendants.—Messrs. *Jefferson, Bhaishankar and Dinshú*.

(1) 3 Ex. D. 195.

(3) 4 C. P. D. 457.

(2) 4 Ex. D. 286.

(4) 5 Ex. D. 15.

(5) L. R. 1 C. P. 576.

ORIGINAL CIVIL.

Before Mr. Justice Marriott.

ADARJI EDULJI GOLA'KHA'NA AND ANOTHER (PETITIONERS)
v. MA'NIKJI EDULJI AND ANOTHER (RESPONDENTS).

Practice—Order refusing leave to sue as a pauper—Review—Civil Procedure Code (Act X of 1877), Sections 409, 413, 541, 623, 625.

An order made under section 409 of the Civil Procedure Code (Act X of 1877) refusing leave to sue as a pauper, is subject to review under section 623. The provisions of section 413 do not affect the right of a person, against whom such order has been made, to obtain a review. A petitioner applying for such review, must file a copy of the order of which he seeks a review, together with a memorandum of objections (secs. 541 and 625).

THE petitioners had been refused leave to sue as paupers. They subsequently obtained a rule *nisi*, calling on the respondents to show cause “why the order refusing leave to the petitioners to sue as paupers, made on the 24th April 1880, should not be reversed and set aside on the ground of fresh matter disclosed.” The

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fresh matter was contained in the affidavits read in support of the application for the rule *nisi*.

Pherozshá Mehtá, for the respondents, showed cause.—This application by the petitioners is really a “subsequent application of the like nature” as the original application for leave to sue, and is, therefore, forbidden by section 413 of the Civil Procedure Code (X of 1877). It is clear from section 413 that the Legislature intended that an order, refusing leave to sue as a pauper, should be final, and should not be open to review under section 623. Repeated applications of this kind are a hardship upon respondents, who are compelled to incur costs in opposing them.

The petitioners ought to have filed a memorandum of the grounds of objections to the order of which they ask a review, together with a copy of the order—sections 625 and 551 of the Civil Procedure Code. The case of *Mahomed Gazeé Chowdhry v. Doolab Bebee*⁽¹⁾ was referred to.

MARRIOTT, J.—When I granted the rule I was aware of the objection that might be raised under section 413 of the Code. I still consider that my order of the 24th April is reviewable under section 623 of the Code, and I do not think that section 413 in any way affects this right of review. The Court can always take care to protect a respondent from being needlessly harassed.

As to the second objection, it must be allowed, unless waived. As the petitioners will have still time to obtain another rule, it will save time if this objection be withdrawn.

The question was waived accordingly.

Rule made absolute.

Attorneys for respondents.—Messrs. *Tyabji and Sayáni*,

(1) 11 Cal. W. R. 22.