

## APPELLATE CIVIL.

*Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.*

GOPAL GUNDAPA NAIK (ORIGINAL PLAINTIFF), APPLICANT, *v.*

VISHNU KRISHNA NAIK (ORIGINAL DEFENDANT), OPPONENT.\*

1897.

November 9.

*Civil Procedure Code (Act XIV of 1882), Secs. 58, 62, 63, 64—Plaint registered—Copy extract from account books annexed—Books of account not produced for confirmation—Penalty for non-production of books—Practice—Procedure.*

On the 14th April, 1897, a plaint was presented and was numbered and registered as a suit. Annexed to it was a copy of an extract from the plaintiff's account books. The matter was adjourned to the 2nd June, 1897, for the production of the account books, in order that the copy might be compared and verified. On that day neither the plaintiff nor his pleader appeared with the books, whereupon the Subordinate Judge rejected the plaint, holding that no summons could be issued unless the copy extract annexed to the plaint was found to be correct.

*Held* (reversing the order) that the plaint having been registered on the 14th April, summonses ought to have been issued on the 2nd June. There was no provision in the Civil Procedure Code (Act XIV of 1882) justifying the rejection of the plaint. The penalty which the plaintiff incurred for not producing his original accounts was that prescribed in section 63, *viz.*, not being able to put in that account without the special leave of the Judge.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of Ráo Bahádur Gangadhar V. Limaye, First Class Subordinate Judge of Belgaum, in Small Cause Suit No. 279 of 1897.

On the 14th April, 1897, being the last day of the sitting of the Court before the summer vacation, the plaintiff presented a plaint to recover the balance due on an account. Annexed to the plaint was a copy of an extract from plaintiff's account books. The plaint was duly numbered and registered under section 58 of the Civil Procedure Code and the matter was adjourned to the 2nd June, 1897, which was the first day of sitting after the vacation, for the production of plaintiff's account books in order that the annexed copy might be compared with the books (section 62). On that day neither the plaintiff nor his pleader being present in Court with the account books, the Subordinate Judge

\* Application, No. 139 of 1897, under the Extraordinary Jurisdiction.

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rejected the plaint, holding that no summons could be issued to the defendant unless the copy of the extract from the books was found to be correct after comparison with the books themselves. Subsequently the plaintiff applied to the Court to have the suit placed on the file on the ground that he had been prevented by illness from attending the Court on the 2nd June and that his pleader was not bound to be present on that day as it was not the day of hearing. The Court rejected the application.

The plaintiff, therefore, applied to the High Court under its extraordinary jurisdiction, and contended that the order dismissing the suit was not warranted by any provision of the Civil Procedure Code (Act XIV of 1882), and that the Judge had no jurisdiction to make it. A rule *nisi* having been issued calling on the defendant to show cause why the suit should not be restored to the file,

*Balaji A. Bhagvat*, for the plaintiff, appeared in support of the rule.

There was no appearance for the opponent (defendant) to show cause.

FARRAN, C. J.:—In this case there has apparently been no contumacious refusal by the plaintiff to produce his books, and there is no direct provision of the Code, that we can find, which justifies the action which the Subordinate Judge has adopted. The plaint having been registered under section 58 on the 14th April, the Subordinate Judge ought, on the 2nd of June, to have issued summonses. The penalty which the plaintiff incurred for not producing his original account on that day is that prescribed by section 63, *viz.*, not being able to put in that account without the special leave of the Judge.

We set aside the order dismissing the suit, and direct that the Subordinate Judge do issue summonses under section 64, and proceed with the hearing of the suit in due course. Costs, costs in the cause.

*Order set aside.*