

## APPELLATE CIVIL.

*Before Mr. Justice Chandavarkar and Mr. Justice Aston.*

1904.  
January, 20.

THE MUNICIPAL OFFICER, ADEN (ORIGINAL DEFENDANT), APPLICANT,  
v. ABDUL KARIM FATEH MAHOMED (ORIGINAL PLAINTIFF), OPPO-  
NENT.\*

*Letters Patent, clauses 13, 40—Privy Council—Leave to appeal—Interlocutory orders—Jurisdiction, question of.*

The High Court in the exercise of its extraordinary Original Civil Jurisdiction removed to itself for trial a suit instituted in the Court of the Resident at Aden. On an application having been made for leave to appeal to the Privy Council—

*Held*, that the certificate prayed for should be given, for (1) even if the order to be appealed from was interlocutory, the High Court had discretion to grant the certificate under clause 40 of the Amended Letters Patent; (2) that the value of the subject-matter was Rs. 10,000; and (3) the question raised was one of jurisdiction.

APPLICATION by the Municipal officer at Aden for leave to appeal to the Privy Council.

On the 5th March, 1903, the opponent applied to the High Court on the Appellate Side for a transfer of the suit filed by him against the Municipal officer at Aden in the Court of the Resident at Aden to the High Court of Bombay for trial and determination.

The High Court (Candy, Officiating C.J., and Chandavarkar, J.) on the 7th July, 1903, ordered the transfer of the case to itself.

The applicant applied for leave to appeal to the Privy Council; the prayer was expressed as follows:—

“Your petitioner therefore prays that your Lordships will be pleased—

(a) to grant him permission under clause 40 of the said Letters Patent to appeal against the said order to His Majesty in Council and to grant him in such form as to your Lordships may seem meet a certificate that the case is a fit one for such appeal; and

(b) to admit his petition and to transmit to His Majesty in Council under the seal of this Honourable Court a correct copy of the record so far as is material to the questions in dispute herein.

\* Civil Application No. 558 of 1903.

The grounds upon which the application was made were that (1) the Court of the Resident at Aden was not subject to the superintendence of the High Court of Bombay; (2) that the High Court had no power to transfer the suit for trial to itself as a Court of extraordinary original jurisdiction under the provisions of clause 13 of the Amended Letters Patent; (3) that the said clause could not be applied in the case of a suit instituted in a Court not subject to the appellate jurisdiction of the High Court; and (4) that under the provisions of Act II of 1864 the Court of the Resident at Aden is not subject to the appellate jurisdiction of the High Court.

*Scott* (Advocate General), with the Government Solicitor, for the applicant.

*Sstahvad*, with *Edgelow*, *Gulabchand* and *Wadia*, for the opponent.

CHANDAVARKAR, J. :—We think we must grant the certificate applied for. It is true that the application for the transfer of this case was made and heard on the Appellate Side of this Court, where appeals from the mofussil Courts are dealt with; but clearly it was an application under our extraordinary jurisdiction, which could be entertained by this Court and heard only under section 13 of the Charter Act: and according to section 40 of that Act, even assuming that the order is interlocutory, we have discretion to grant the certificate.

The value of the property is not quite clear from the records of the case, but as is pointed out to us by the learned Advocate General, the plaintiff claims rent at Rs. 50 a month, or Rs. 600 a year, and that would come to over Rs. 10,000 at 18 years' purchase. Even assuming that the value is less than Rs. 10,000, we think this is a fit case for the grant of the certificate applied for. This Court has held that it has jurisdiction to transfer this case from the Aden Court to this Court. That really means that the plaintiff can sue in this Court, and not at Aden. The question raised is one of jurisdiction which goes to the root of the case: see *Hadjee Ismail v. Hadjee Mahomed—Rohima Bye v. Hadjee Mahomed* <sup>(1)</sup>.

(1) (1874) 13 Beng. L. R. 91 at p. 101.

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We therefore declare that the case is a fit one for appeal to the Privy Council and direct that the certificate applied for be granted.

Costs of this application to be costs in appeal.

*Certificate granted.*

## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.*

RAMPYARABAI, WIDOW OF GANESHARAM (ORIGINAL PLAINTIFF), APPELLANT, v. BALAJI SHRIDHAR (ORIGINAL DEFENDANT), RESPONDENT.\*

*Indian Evidence Act (I of 1872), sections 32 (2), 34—Accounts—Corroboration.*

The plaintiff relied on entries in the handwriting of her deceased husband kept in the ordinary course of his business.

*Held*, that entries in accounts relevant only under section 34 of the Indian Evidence Act (I of 1872) are not alone sufficient to charge any person with liability; corroboration is required; but where accounts are relevant also under section 32 (2), they are in law sufficient evidence in themselves, and the law does not, as in the case of accounts admissible only under section 34, require corroboration. Entries in accounts may in the same suit be relevant under both sections, and where that is so, it is clear that inasmuch as they are relevant under section 32 (2), the necessity of corroboration prescribed by section 34 does not arise.

Though accounts which are relevant under section 32 (2) do not as a matter of law require corroboration, the Judge is not bound to believe them without corroboration; that is a matter on which he must exercise his own judicial discretion as a Judge of fact.

SECOND appeal from the decision of L. Crump, District Judge of Sâtara, confirming the decree passed by V. V. Paranjpe, First Class Subordinate Judge of Sâtara.

The plaintiff, who was the widow of one Ganeshram, sued in the year 1897 to recover from the defendant Rs. 1,423, including interest, as the balance due to her deceased husband on a current account. The plaint alleged that the sum claimed was due in respect of fifteen debit items amounting to Rs. 1,644 of various

\* Second Appeal No. 263 of 1903.

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