

I dismiss the summons so far as it applies for inspection at present. Costs will be costs in the cause. I certify for counsel.

Attorneys for the plaintiffs:—Messrs *Malvi, Hiralal, Mody & Ranchhodlas.*

Attorneys for the defendants:—Messrs. *Mansukhlal, Jamshetji and Hiralal.*

1907.

KHETSIDAS
v.
NAROTUMDAS.

B. N. I.,

ORIGINAL CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

JAN MAHOMED ABDUL LATIFF AND ANOTHER, RELATORS AND APPELLANTS, v. SYED NURUDIN BIN SYED HISAMUDIN RAFAR AND OTHERS, DEFENDANTS AND RESPONDENTS.*

1907.

August 6.

Civil Procedure Code (Act XIV of 1882), section 539—Suit by Advocate General at instance of relators dismissed—No appeal by Advocate General—Appeal by relators—Maintainability.

A suit having been brought by the Advocate General he is the proper party to appeal and not the relators. The relators are not parties to the suit and as relators they have no right to step in when the Advocate General, who was plaintiff, has not thought fit to appeal against the dismissal of the suit.

THIS was a suit brought by the Advocate General at the instance of relators under the provisions of section 539 of the Civil Procedure Code.

On the 8th of February 1907 upon motion by the defendants the Court ordered the plaintiff's relators to provide security to the satisfaction of the Prothonotary for the balance of the estimated costs of the defendants within a certain time.

On the 7th March the Court ordered the suit to stand dismissed. A month having elapsed and no real effort made to give security as required against this order the defendants appealed.

Strangman with Bahadurji for respondents contended that the appeal was not maintainable because the Advocate General was

* Original Suit No. 773 of 1905, Appeal No. 1482.

1907.

JAN
MAHOMED
D.
SYED
NURUDIN.

not a party. The relators only sustain the action, they are not parties to the suit, see Daniell's Chancery Practice, Volume I, p. 56, and *Attorney-General v. Wright*⁽¹⁾.

Talyarkhan and Padsha, for the appellants.

CHANDAVARKAR, J.—We are against the appellants on the preliminary objection to this appeal raised by the respondents' counsel. We are of opinion that the suit having been brought by the Advocate General, he was the proper party to appeal and not the relators who have filed this appeal. They were not parties to the suit and as relators they have no right to step in when the Advocate General, who was plaintiff, has not thought fit to appeal against the dismissal of the suit.

The authorities cited by Mr. Strangman, viz., Daniell's Chancery Practice, Vol. I, page 56, and *The Attorney General v. Wright*⁽¹⁾, are in point.

The appeal must, therefore, be dismissed with costs (including the costs reserved yesterday) upon the ground that the appeal does not lie at the instance of the relators.

Appeal dismissed.

Attorney for the appellants: Mr. M. B. Chokhia.

Attorneys for the respondents: Messrs. Captain and Vaidya.

B. N. L.

(1) (1841) 3 Bew. 447.