

vested in Government for that purpose by section 211 of the Land Revenue Code. It may be added that no kabulayat was given to the appellant in order to vest in him any right of occupancy. As to the old kabulayat (Exhibit 15), that must be read and interpreted by the light of the appellant's application (Exhibit 36) upon which it was based, and by the light of the local officers' reports and decisions connected therewith. So reading it, it appears to me quite clear that the manuscript phrase added to the margin of this kabulayat means only that the appellant undertook to surrender this land whenever Government in their discretion required him to do so.

Decree confirmed.

G. B. R.

1912.

SAPURLO
SABSHETTI
v.
THE
SECRETARY
OF STATE
FOR INDIA

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Russell.

GOVIND BALKRISHNA JOSHI (PLAINTIFF), APPLICANT, v. PANDURANG
VINAYAK JOSHI (DEFENDANT), OPPONENT.*

1912.

March 1.

Provincial Small Causes Courts Act (IX of 1887), Schedule II, clause 35, sub-clause (l)—Threat to assault—"Injury to the person"—Exemption from the cognizance of the Court of Small Causes.

A suit to recover damages from the defendant who ran after the plaintiff with a shoe in hand threatening to beat him and using abusive language, but did not actually touch the plaintiff's person, is a suit for "injury to the person" within the meaning of clause 35, sub-clause (l) of the second schedule of the Provincial Small Causes Courts Act (IX of 1887) and is not within the cognizance of the Small Cause Court.

APPLICATION under the extraordinary jurisdiction (section 25 of the Provincial Small Causes Courts Act, IX of 1887) against the decision of C. Roper, District Judge of Poona, dismissing an appeal under Order XLI, rule (2) of the Civil Procedure Code (Act V of 1908) against the order of D. G. Medhekar, First Class

* Application No. 242 of 1911 under the extraordinary jurisdiction and Civil Reference No. 13 of 1911.

1912.

GOVIND
BALKRISHNA
v.
PANDURANG
VINAYAK.

Subordinate Judge of Poona, also Civil Reference by R. G. Bhadbhade, Judge of the Court of Small Causes at Poona.

Plaintiff, Govind Balkrishna Joshi, brought a suit to recover Rs. 75 as damages from defendant, Pandurang Vinayak Joshi, who ran after the plaintiff with a shoe in his hand, threatening him and using abusive language, but did not actually touch the person of the plaintiff. The suit was brought in the Court of the First Class Subordinate Judge of Poona who, being of opinion that the suit could not lie in his Court, returned the plaint for presentation to the Court of Small Causes at Poona. The grounds for the return of the plaint were as follows :—

But what is meant by that sub-clause is "injury to the person" and not injury to "a person". "The person" would mean the bodily form or human frame. In the present case there was no injury to the person or the bodily frame, but an injury to the personal liberty of the plaintiff. The plaintiff in his examination (Exhibit 8) states that the alleged loss was sustained by him, not by reason of any actual injury to his body, but by reason of his being prevented from carrying on his avocation and by having to undergo expenses in prosecuting the defendant. Such an injury is not, I think, contemplated by sub-clause (1) of clause 35 of the second schedule of Small Causes Courts Act.

The plaintiff appealed to the District Judge, who dismissed the appeal under Order XXI, rule (2) of the Civil Procedure Code (Act V of 1908), observing :—

The suit would ordinarily be one which the Small Cause Court alone could try (see sections 15 and 16, Provincial Small Causes Courts Act). The appellant however relies on clause 35 (2) of the second schedule to the Act. That provision exempts from Small Cause Court's jurisdiction suits for compensation for injury to the person in any case not mentioned in the other sub-clauses of clause 35. It is admitted, and also appears from the plaint, that no actual injury to the person was caused by the defendant. The assault alleged took the form of threat and gesture and did not go to the extent of injuring the person.

The plaintiff applied to the High Court under the extraordinary jurisdiction (section 25 of the Provincial Small Causes Courts Act IX of 1887), urging that the District Judge erred in holding that the First Class Subordinate Judge's Court had no jurisdiction to entertain the suit which was for compensation for injury caused by assault to the plaintiff, that clause 35 (2) of the Provincial Small Causes Courts Act was clearly applicable and that the assault was personal injury and a suit based on assault was a suit for injury to the person.

1912.

GOVIND
BALKRISHNA
v.
PANDURANG
VINAYAK.

In the meanwhile the plaintiff presented his plaint to the Court of Small Causes at Poona, and the Small Cause Court Judge, feeling a doubt as to whether his Court had jurisdiction to entertain the suit, referred the question to the High Court in the following terms :—

Now, assaults are classed in the Text Book on Torts under "injury to person". Any gesture calculated to excite the party, threatened a reasonable apprehension that the threat would be immediately carried into effect, if coupled with a present ability to carry such threat into execution constitutes an assault in law.

The First Class Sub-Judge appears to have held that there was no complete assault; but actual touching is not necessary. See Ratanlal on Torts, page 151, 4th Edition, and *Stephens v. Myers*, set out at page 152 in the above.

I am of opinion that the suit is not cognizable by this Court.

The application and the reference were heard together.

P. D. Bhide for the applicant.

D. G. Dalvi (*amicus curiæ*) in support of the reference.

B. V. Desai (*amicus curiæ*) against the reference.

SCOTT, C. J. :—The action complained of by the plaintiff would be an assault and an offence affecting the human body under the Penal Code. It also would be an assault under the English law: see *Stephens v. Myers*⁽¹⁾. We think also that it was an injury to the person within the meaning of clause 35, sub-clause (b), of the second schedule of the Provincial Small Causes Courts Act, and the suit was, therefore, not within the cognisance of the Small Cause Court.

We set aside the decree of the First Class Subordinate Judge and remand the case for trial to him.

Rule made absolute.

Costs costs in the cause.

Rule made absolute.

G. B. R.

(1) (1890) 4 C. & P. 349.