

In this case the injury caused to the plaintiff by wrongful prosecution was personal just as much as if he had been injured in a railway accident. Consequently his representatives cannot continue the action to recover the pecuniary loss which he suffered owing to his having had to defend himself against the prosecution. We think, therefore, the decision of the Court below was right and the appeal must be dismissed with costs.

*Appeal dismissed.*

R. R.

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APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.*

HIRACHAND AMICHAND GUJAR (ORIGINAL PLAINTIFF), APPELLANT *v.*  
NEMGHAND FULCHAND MARWADI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS\*.

1923.

February 14.

*Transfer of Property Act (IV of 1882), section 6 (e)—Mere right to sue—Right to sue for damages for breach of contract—Right cannot be transferred.*

Section 6 (e) of the Transfer of Property Act, 1882, prohibits transfer of a right to sue for damages for breach of contract.

*Abu Mahomed v. S. C. Chunder*<sup>(1)</sup>, followed.

FIRST appeal from the decision of N. G. Chapekar, First Class Subordinate Judge at Sholapur.

Suit to recover damages for breach of contract.

One Jivraj Amichand contracted to sell manufactured cloth to defendants, who failed to take delivery. Jivraj sold the goods on defendants' account and suffered a loss of Rs. 13,784. Subsequently he transferred his right to recover damages to the plaintiff.

\* First Appeal No. 224 of 1921.

<sup>(1)</sup> (1909) 36 Cal. 345.

1923.

HIRACHAND  
AMICHAND  
v.  
NEMCHAND  
FULCHAND.

The plaintiff sued to recover the amount of damages from the defendants.

The trial Court dismissed the suit.

The plaintiff appealed to the High Court.

*H. C. Coyajee*, with *N. V. Gokhale*, for the appellant.

*G. N. Thalcor*, with *R. A. Jahagirdar*, for the respondents.

MACLEOD, C. J. :—The firm of Jivraj Amichand entered into contracts for the purchase of specified goods at various rates as evidenced by the sale-notes from the Laxmi Mills. Then the same firm contracted to sell the goods bought under the aforesaid agreements to the defendant firm, Nemchand Gulabchand, at a profit. Jivraj Amichand complained that the defendants would not take delivery and purported to sell the goods against the defendants. The result was that owing to the refusal of the defendants to take delivery there appeared to be a loss of Rs. 13,000 odd to Jivraj Amichand. It was open then to Jivraj Amichand to file a suit against the defendants for damages for breach of the contract. Instead of so doing, Nemchand, one of the partners of the said firm, purported to transfer to the plaintiff the right to recover damages.

The suit was dismissed in the trial Court on the ground that the defendants did not break the contract. When it came before us in appeal it seems to us obvious that the right to claim damages against the defendants' firm could not be transferred under section 6 (e) of the Transfer of Property Act. It was merely a right to sue, and it was not a transfer of an "actionable claim" as defined in section 3 of the Act, being neither a debt, nor a beneficial interest in moveable property.

The same point had to be decided by the High Court of Calcutta in *Abu Mahomed v. S. C. Chunder*<sup>(1)</sup>. Maclean, C. J. said (p. 351) :

“ I do not think that we can properly bring a mere claim for damages for breach of contract within those words [actionable claim]. Now, if it does not fall within the definition of ‘ actionable claim ’, what is it except a mere right to sue, a mere right to sue for damages resulting from an alleged breach of contract. It seems to me that it is not anything more or less than that ; and if so, that cannot be transferred.”

With due respect that reasoning seems obviously right. Therefore this appeal must be dismissed. The appellant’s counsel urges upon us that he ought not to be made to pay respondents’ costs, as this point was not taken in the Court below. But it was open to the respondents’ counsel to dispute the plaintiff’s case in this Court on any point which was open to him, and as the plaintiff was not satisfied with the decision of the trial Court, but wished to take his chance of obtaining a decision in his favour in this Court, he must pay the costs of the appeal.

*Appeal dismissed.*

R. R.

(1) (1909) 36 Cal. 345.

## APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.*

CHIMANBHAI KALYANBHAI AND ANOTHER (ORIGINAL PLAINTIFFS),  
APPLICANTS *v.* KESHAVLAL BULAKHIDAS AND OTHERS (ORIGINAL  
DEFENDANTS), OPPONENTS\*.

1923.  
*February 21.*

*Civil Procedure Code (Act V of 1908), section 115, Schedule II, Rule 15—  
Suit—Reference to arbitration by Court—Award—Setting aside of award—  
Revisional jurisdiction—High Court.*

No application lies under section 115 of the Civil Procedure Code against an order passed under Schedule II, Rule 15, setting aside an award made on a reference to arbitration in the course of a suit.

\* Civil Extraordinary Application No. 210 of 1921.