

abandoned his case, and must have judgment given against him in this Court. Judgment will be entered for the defendants, and the plaintiff must pay the costs of reserving the question, and stating it for the opinion of this Court, and otherwise arising thereout, or connected therewith.

Attorneys for the Defendants: *Messrs. Berners & Co.*

B. L. R. Vol. V, p. 28.

(Appendix.)

The 25th April 1870.

Before Mr. Justice Norman and Mr. Justice Markby.

RAMFAL SHAW,

versus

BISWANATH MANDAL and others.

Advocate—Witness.

This was a reference from the First Judge of the Calcutta Small Cause Court on the following question:—

“Whether one, Ramanath Law, who, though an attorney, had acted as advocate for the plaintiffs, and pleaded their case in Court, could be examined as a witness in the case?”

The Judge admitted the evidence on the authority of *Cobbett v. Hutson* (1), and gave judgment in favor of the plaintiffs. The question was reserved at the request of the defendants.

Mr. Macrae for the plaintiffs referred to the case above cited, and to Section 14 of the Evidence Act II of 1855, which mentions the only persons who are incompetent to be witnesses.

Norman, J.—I think it quite plain that the witness is competent; if there had been any doubt on that point, the doubt would have been removed by a reference to the section of the Evidence Act to which *Mr. Macrae* referred. The plaintiff will be entitled to the costs, in the Small Cause Court,

of reserving the question of stating the same for the opinion of the High Court and of the argument before us.

Attorneys for Plaintiff: *Messrs. Swinhoe & Co.*

Attorneys for Defendant: *Messrs. Sims and Mitter.*

B. L. R. Vol. V, p. 29.

(Appendix.)

The 6th May 1870.

Before Mr. Justice Bayley and Mr. Justice Markby.

In the matter of the Petition of RANI UMASUNDARI DEBI.

Rule Nisi, No. 332 of 1870.

24 & 25 Vict., c. 104, s. 15—Power of the High Court—Review of Order refusing Petition to sue *in forma pauperis*.

A Court of original jurisdiction has power to entertain an application to review an order refusing a petition for leave to sue *in forma pauperis*.

Under Section 15 of 24 & 25 Vict., c. 104, the High Court set aside an order of a Court of original jurisdiction, refusing to entertain such an application on the ground that the Court had not jurisdiction to entertain it.

In this case Rani Umasundari Debi had obtained a rule *nisi* on a petition, which shewed that the petitioner applied to the Court of the Subordinate Judge of Zilla Midnapore, for permission to bring a suit, *in forma pauperis*, against her husband, for the recovery of alimony; that the said Court, after seeing no reason to refuse the application on any of the grounds stated in Section 304, Civil Procedure Code, fixed the 15th day of January last for receiving such evidence as the petitioner might adduce in proof of her pauperism, and for hearing any evidence which the opposite party might bring forward in disproof of the pauperism of the petitioner: that, being now a resident of Bhowanipore, the petitioner forwarded two of her witnesses from the said place of her residence, with a view that they should give evidence as to her pauperism on the said 15th January, in ample time to reach the Court before the day fixed for hearing; that one of the

(1) 1 E. & B., 11.

witnesses, named Thakur Das Roy, was attacked with cholera on the way to the Court at Ulubariah, and the other was necessarily detained to take care of the sick; that, in the mean time, the Subordinate Judge struck off the petitioner's application, on default, on the 18th; that the petitioner, on coming to know about the illness of the said witness and the detention of the other, sent instruction to her agent at Midnapore to file an application for re-hearing of the case, on the cause before assigned; that as the petitioner is a pauper, and as none of the lawyers take up her case warmly, on the 14th February last, a petition was made to the Subordinate Judge to re-hear the matter of the petitioner's pauperism; and that the Subordinate Judge refused to hear the petitioner's application, on the ground that, under Chapter V, Act VIII of 1859, he had no jurisdiction to entertain a petition for re-hearing on cause shewn or for entertaining a second application to sue *in forma pauperis*. The petitioner prayed the High Court to exercise the power given to it by Section 15 of the Charter Act (1), and to direct the Subordinate Judge to entertain the application as to whether the petitioner's witnesses had not been detained in the way to the Court, as one had fallen ill, and the other was detained to watch him; and if so, then to hear the evidence as to her pauperism, and decide the matter.

Upon hearing the petition, BAYLEY and KEMP, JJ., granted her a rule *nisi* calling upon the opposite party to show cause why the Subordinate Judge should not be directed to enquire as to whether there were good and sufficient grounds for the delay alleged by the petitioner, and, if satisfied, why he should not examine the witnesses as prayed for.

Baboo Annada Prasad Sanerjee, Anukul Chandra Mookerjee, and Purna Chandra Shome now showed cause. They contended that the petitioner had had ample time to produce her evidence, but had neglected to do so.

Baboo Tarrak Nath Sen and Gopi Nath Mookerjee for the Petitioner.

The judgment of the Court was delivered by

Bayley, J.—We think this rule must be made absolute. The Subordinate Judge is

wrong to have held, as the only reason for his refusing jurisdiction, that, after a careful study of Chapter V of the Civil Procedure Code, he considers himself debarred from allowing the re-hearing of a pauper application. It is quite within the discretion of the Subordinate Judge to allow the pauper application or not. But before granting the application in this case the Subordinate Judge must carefully, see whether, under the circumstances of this case, there was good and sufficient cause for the delay, that is to say, whether it was owing to circumstances beyond the lady's control that the delay occurred; and that on knowing the cause of the delay she immediately took measures to inform the Court and prosecute the case in its proper light. Without proof of this the petition should not be granted.

B. L. R. Vol. V, p. 30.

(Appendix.)

The 11th May 1870.

Before Mr. Justice Loch and Justice Sir C. P. Hobhouse, Bart.

EMAUDDIN KHAN (*Defendant*),

versus

RAMKISSORE KOWAR (*Plaintiff*).

Special Appeal No. 3025 of 1869, from a decree of the Subordinate Judge of Sarun, dated the 28th September 1869, affirming a decree of the Moonsiff of that district, dated the 25th February 1869.

Valuation of Suit—Appeal.

When a suit has been admitted upon a certain stamp, tried, and decreed for the plaintiff, "under valuation" is no ground for dismissing the defendant's appeal.

THIS was a suit to recover possession of certain land before the Moonsiff of Sarun. The defendant pleaded, *inter alia*, that the suit had been instituted on an insufficient stamp.

The Moonsiff, however, said "It does not appear that the institution of this suit has caused any loss to Government in respect of the stamp duties;"