

[APPELLATE CIVIL JURISDICTION]

1873.
April 1.*Referred Case.*RAMJI MANOR *Plaintiff.*F. D LITTLE *Defendant.**Master and servant—Monthly servant leaving service without notice—
Forfeiture of wages.*

Where a servant, who was engaged by the month, served from the 1st November to the 3rd December 1872 and left his master's service on the 4th December, without giving notice :—

It was held that the servant was entitled to be paid his wages up to the end of November but forfeited the wages payable to him in respect of his December services.

THIS was a reference from Gopātrāv Hari Deshmukh,
I Judge of the Small Cause Court at Ahmedabad.

"I. The question is whether the English Law of Master and Servant is applicable to a case in the Small Cause Court in which the defendant is an Englishman ?

"II. If so, a servant, on leaving his master's service without notice, forfeits a month's pay, but does the month mean 30 days before date of leaving or the portion of the current month, preceding the day on which the servant left ?

"III. The plaintiff has filed this suit for the recovery of his wages for one month and three days, *i.e.*, from 1st November to 3rd December 1872, and it is proved that the plaintiff was a monthly servant receiving Rs. 15 a month, and that he left his master's service, without due notice, on the 4th December 1872.

"IV. The defendant states that he would pay the plaintiff for three days of November and withhold one month's pay from 4th November to 3rd December 1872, that being the month preceding the day of leaving.

1873.

In re
Sitaram
Abbaji.

Mr. marriott, in the case of *Bhugwanjee Dwarikadass*, argued in favour of the negative of the question, but did not produce authorities of much moment, certainly not such as to guide me; and as his application was disposed of by being granted under a rule of the Court, I cannot deem that his argument was an answer No Mr. Lang's or was complete.

From the best consideration I have been able to give to the matter, I think the Official Assignee should be instructed to proceed, so far as circumstances will admit, with the insolvency in the same manner as he would have done, had the insolvent been living. The property was by order under the 7th Section, vested in the Official Assignee in trust for the creditors, and I cannot find any authority for holding that the death of the insolvent supersedes or nullifies that order.

Had the legislature intended that the death of the insolvent should produce such a result, it would most probably have said so, as it has said in the proviso in the 7th section of the Act with regard to the dismissal of the insolvent's petition. I think that the Official Assignee may proceed as usual.

April 19.

[ORIGINAL CIVIL JURISDICTION.]

GRAHAM AND OTHERS..... *Plaintiffs.*HILLE..... *Defendant.*

Bill of lading—Construction of Exceptions—Leakage—Breakage—Damage caused to goods by leakage from other goods.

Piece goods were carried from London to Bombay under a bill of lading, the exceptions in which protected the master from "*leakage, breakage, rust, decay, loss, or damage from Machinery boilers, misfeasance, error in judgment, negligence or default of persons in the service of the ship*" and the ship not being liable for any consequences of causes therein excepted however originating."

The piece goods, on their arrival in Bombay, were found to be damaged by oil and by chafing, *i.e.*, by rubbing against other goods in the hold, but there was no evidence to show how such damage was occasioned.