

1873.
April 1.

[APPELLATE CIVIL JURISDICTION.]

Referred Cases.

- (1) GEORGE BRIDGE.....*Plaintiff.*
EDALJI MANCHARJI.....*Defendant.*
(2) VITHAL AMBARAM.....*Plaintiff.*
DAYABHAI MURLIDHAR.....*Defendant.*

Award—Small Cause Court—Jurisdiction to file Award—Civ. Proc. Code, Sec. 327.

A Small Cause Court has power, under Section 327 of the Civil Procedure Code, to file an award for a sum not exceeding Rs. 500, and to proceed under that section, if the defendant reside within the jurisdiction of the Court.

THESE cases were referred for the opinion of the High Court by Syad Hussein El Medini, Judge of the Courts of Small Causes at Broach and Surat, with the following observations :—

“This is an application under Section 327 of the Code of Civil Procedure.

* * * *

“The award, presented with the application, relates to a debt.

“Section 47 of Act XI. of 1865 (the Mofussil Small Cause Courts Act) is as follows:—‘Except as hereinbefore provided, the provisions of the Code of Civil Procedure shall, so far as the same are or may be applicable, extend to all suits and proceedings under this Act.’

‘It does not direct that Act VIII. of 1859 shall be the procedure of the Small Cause Court, as Section 388 of the Code does with respect to the ordinary Civil Court. It simply means that the provisions of the Act will apply to suits and proceedings made cognizable by the Small Cause Court Act.

"I have, therefore, to ascertain whether the application under reference has been made cognizable by the Small Cause Court Act. There is nothing in this Act which makes an application like this cognizable by this Court. . .

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"Moreover, the provisions of Section 327 of the Code have been incorporated into Sections 524 and 525 of the new Bill as settled by the Select Committee for consolidating and amending the laws relating to the procedure of the Courts of Civil Judicature, and the Small Cause Courts have been expressly exempted from the operation of these sections. Section 3 of the Bill is as follows:--'The sections having the letters S. C. C. affixed to them in a parenthesis extend (so far as they apply or are applicable) to Courts of Small Causes. The other sections do not extend to such Courts.' Sections 524 and 525 above referred to have not the letters S. C. C. affixed to them, and, therefore, they do not extend to the Small Cause Courts. * * *

'Now, if the Legislature itself had not volunteered to declare its intention respecting the non-applicability of the provisions of Section 327 of the Code of Civil Procedure to Courts of Small Causes, I should have distrusted my own Judgement and followed the decision of Sir Barnes Peacock, C.J., and Dwarkanath Mitter, J., in *Elam Furamanick v. Seofaetullah Sheikh (a)* which is as follows:--'If the award relate to a debt, not exceeding the amount cognizable by a Small Cause Court, we are of opinion that the Small Cause Court has jurisdiction, under Section 327, Act VIII. of 1849, to entertain an application to file the award, provided the defendant resides within the jurisdiction. In such a case, the Small Cause Court would have jurisdiction over the matter to which the award relates.'

"The second plaint is an action on an oral award to recover Rs. 110. It is alleged in the plaint that the parties had submitted to the arbitration of a third man who pronounced his award orally in pursuance of this submission. The submission to the arbitration was also not in writing.

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"The question is whether this action will lie in a Small Cause Court.

"Under the ruling of the Bengal High Court published at page 76, Weekly Reporter for 1864, Civ. Rul, it appears that a submission of private arbitration may be perfectly valid, though not put in writing, and a private award made in pursuance of such submission may be proved by the arbitrators themselves.' And as there can be no doubt that 'debt' will lie upon an award of this kind, the plaint comes within the purview of Section 6 of Act XI. of 1865.

"As this decision of the case creates the anomaly that whereas a suit will lie in a Mofussil Small Cause Court on an award yet the summary application provided for by Section 327 of the Code cannot, for the reasons stated above, be entertained by the said Court, I have deemed it advisable to submit this case also for the decision of their Lordships.

The cases came on for consideration before WESTROPP, C." J., and MELVILL, J., on the 1st april 1873.

PER CURIAM:—This Court concurs in the case (*Elam Puramanick v. Sefactullah*) cited by the Judge of the Court of Small Causes at Stuart, and replies to the Judge by saying that he has power to file, under Section 327 of the Civil Procedure Code, an award for a sum not exceeding Rs. 500, if the defendant reside within his jurisdiction, and to proceed under that section.