

## APPELLATE JURISDICTION (a)

*Referred Case No. 8 of 1862.*TIRUMANI CHETTI *against* AVADAI VELAN.

On the day fixed for the hearing of a suit in a Court of Small Causes the plaintiff's vakil appeared and stated on behalf of his client that the defendant had satisfied him in respect of the matter of the suit, which he prayed might be dismissed. The defendant did not appear :—*Held*, that the Judge was right in dismissing the suit, but that he should have recorded an order under the first provision in sec. 98 of Act VIII of 1859.

*Held* also that in such a case, when the plaintiff applies for a return of stamp duty, he must strictly being himself within the subsequent of the same section as modified by sec. 26 of Act X of 1862.

CASE referred for the opinion of the High Court by R. B. Swinton, the Judge of the Small Causes Court of Tanjore. 1862.  
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The facts appear from the following judgment, which was delivered by

SCOTLAND, C. J. :—It seems in this case that the plaintiff's duly authorized vakil appeared in Court on the day fixed for the hearing and stated on behalf of his client that the defendant had satisfied him in respect of a bond debt, the subject-matter of the suit, by payment of the amount sued for, and prayed that the suit might be dismissed ; and that there was no appearance on the part of the defendant. No reason appearing why the Judge should do otherwise than rely upon the vakil's statement, it was quite regular, under the circumstances, to entertain the application, and this being granted, we are of opinion that the Judge should, under the first provision in section 98 of Act VIII of 1859(b), have re-

(a) Present Scotland, C. J. and Frere, J.

(b) Act VIII of 1859, section 98 enacts that " if a suit shall be adjusted by mutual agreement or compromise, or if the defendant satisfy the plaintiff in respect to the matter of the suit, such agreement, compromise, or satisfaction shall be recorded, and the suit shall be disposed of in accordance therewith. On the application of the plaintiff reciting the substance of such agreement, compromise or satisfaction, the Court, if satisfied that such agreement, compromise, or satisfaction has been actually entered into or made, shall grant a certificate to the plaintiff authorizing him to receive back from the Collector the full amount of stamp-duty paid on the plaint if the application shall have been presented before the settlement of issues, or half the amount if presented at any time after the settlement of issues and before any witness has been examined. Provided however that no such certificate shall be granted if the adjustment between the parties be such as to require a decree to pass on which process of execution can be taken out."

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corded an order to the following effect:—That it appearing upon the day fixed for the hearing of the suit, by the statement in open Court of the plaintiff's vakil, that the plaintiff acknowledged himself to be satisfied by the defendant in respect of the matter of the suit, by payment of the amount sued for, and there being no appearance by or on behalf of the defendant, the Court accordingly declares the suit to be fully satisfied, and orders that the same be put an end to, and that the defendant be thereof wholly acquitted and discharged.

It may be necessary to add that when the plaintiff makes a further application, with a view to the return of the stamp-duty, he must strictly being himself within the subsequent part of the same section, as modified by section 26 of Act X of 1862 (*a*).

(*a*) Act X of 1862, section 26 enacts that “in modification of so much of section 98 of the Code of Civil Procedure as declares that on the application of the plaintiff reciting the substance of any agreement, compromise, or satisfaction, in accordance with which a suit is adjusted and disposed of, the Court, if satisfied that such agreement, compromise, or satisfaction has been actually entered into or made, shall grant a certificate to the plaintiff, authorizing him to recover back from the Collector the full amount of the stamp-duty paid on the plaint, if the application shall have been presented before the settlement of issues, or half the amount if presented at any time after the settlement of issues and before any witness shall have been examined,—it is enacted that if such application shall have been presented before the suit is called up for the settlement of issues, or in suits in which the summons to the defendant shall be for the final disposal of the suit, as directed in section 41 of the same Code, and in section 9 of Act XLII of 1850 (*for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts established by Royal Charter*) before the hearing of the suit has commenced, the Court, if satisfied that such agreement, compromise, or satisfaction has been actually entered into, or made, shall grant a certificate to the plaintiff, authorizing him to receive back from the Collector half the amount of the stamp-duty paid on the plaint. Provided that no such certificate shall be granted if the adjustment between the parties be such as to require a decree to pass, on which process of execution can be taken out, or in any appealed suit.