

1867.
November 15.
R. C. No. 39
of 1867.

Judge of the Court should give proper attention to **plaints** before they are registered.

Then as to the second question :—

It has been held in England, on grounds of public policy that Judges of Courts of Record ought not to be *compelled* to give evidence of matters which have come to their knowledge judicially, and the same may be considered a sound rule in regard to the Judges of some Courts in the Mofussil. But, clearly, Magistrates are not incapacitated to give evidence of matters which have come before them in the course of a preliminary inquiry into a criminal charge, and which are otherwise admissible. In an action of the nature of the suit in this case the Magistrate who heard the charge is sometimes a witness in England. A reported case in which that occurred (*Freeman v. Arkell*) will be found in 2 Barn. and Cres. 494.

Our answer to the second question is, that the defendant had a right to the evidence of the Subordinate Magistrate.

APPELLATE JURISDICTION (a)

Referred Case No. 12 of 1867.

RUNGIAH PILLAI.....*Plaintiff.*

CHINNASÁMI PILLAI and another.....*Defendants.*

A suit for debt against two defendants whose liability was joint, but one of whom at the time of filing the plaint is neither resident nor personally working for gain within the limits of the jurisdiction, may be tried by a Small Cause Court within whose jurisdiction the other defendant is resident at the time of the commencement of the suit, provided an order is obtained from the High Court under Section 4 of Act XXIII of 1861.

1867.
November 18.
R. C. No. 12
of 1867.

THIS was a case referred for the opinion of the High Court by Captain C. J. Richards, Judge of the Small Cause Court of Wellington in the Zillah of Coimbatore, in Suit No. 17 of 1867.

The suit was for recovery of Rupees 95-13-0 principal and interest upon a loan of money made by plaintiff to defendants at Wellington.

(a) Present : Scotland, C. J. and Ellis, J.

It appeared that the 2nd defendant carried on business within the limits of the jurisdiction of the Small Cause Court of Wellington at the time the cause of action arose; but when the suit was brought, the 2nd defendant resided at Ootacamund, which was not within the jurisdiction of the Wellington Small Cause Court.

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The question submitted for the opinion of the High Court was, whether the suit was to be tried, one of the defendants residing without the jurisdiction of the Court.

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—On the facts stated, the Court of Small Causes at Wellington had not jurisdiction to try the suit as against the 2nd defendant. But the first defendant being, as we take it he was, resident within the limits of the Court's jurisdiction at the commencement of the suit, the case came within Section 4 of Act XXIII of 1861, and the Judge's proper course was to apply for an order under the Section giving him power to hear and determine the suit, as pointed out in the case reported in I. M. H. C. Reps., page 103.

The debt having been incurred at Wellington, and the liability of the defendants being, as we infer, joint, the suit may properly be tried by the Court of Small Causes at Wellington, and we direct that the necessary order be issued.
