

APPEAL FROM ORIGINAL CIVIL.

Before Sir Francis Maclean, Knight, Chief Justice, Mr. Justice Macpherson,
and Mr. Justice Trevelyan.

ISMAIL ARIFF (DEFENDANT) v. S. J. LESLIE (PLAINTIFF.)^a

1896

Costs—Presidency Small Cause Courts Act (XV of 1882), section 22—Presi. November 27.
dency Small Cause Courts Act (I of 1895), section 11—Suit brought before, December 10,
but determined after, the passing of Act I of 1895—Certificate for Costs—
General Clauses Consolidation Act (I of 1868), section 6.

The plaintiff, before the passing of Act I of 1895, instituted in the High Court a suit to recover from the defendant a sum of over Rs. 2,000, which was reduced to a sum of less than Rs. 2,000 before the hearing and therefore below the limit for suits cognizable by the Small Cause Court. At the time of its institution Act XV of 1882 was applicable, by section 22 of which Act a plaintiff was deprived, in a suit cognizable by the Small Cause Court, of his costs if he obtained a decree "for less than 2,000 rupees" unless the Judge who tried it certified it was a fit case to be tried in the High Court. The suit was not determined until after the passing of Act I of 1895, by section 11 of which the deprivation of costs applied to cases in which the plaintiff obtained a decree for "less than 1,000 rupees." The Judge made a decree in favour of the plaintiff, and, without certifying that the case was one fit to be brought in the High Court, he allowed the plaintiff the costs of the suit.

Held, on appeal, that the case was governed by section 6 of the General Clauses Consolidation Act (I of 1868): Act I of 1895 was not applicable, and the plaintiff was not entitled to his costs of suit. The principle of *Deb Narain Dutt v. Narendra Krishna* (1) applied.

THE plaintiff, an attorney, brought a suit in the High Court in December 1894, to recover from the defendant a sum of over Rs. 2,100 due by way of costs. After the plaint had been filed, the plaintiff discovered that he had inadvertently omitted to credit the defendant with a payment of Rs. 300. He at once wrote to the defendant giving credit for that sum, and reducing the claim to Rs. 1,800 odd. When the suit was instituted section 22 of the Presidency Small Cause Court's Act (XV of 1882) was applicable to it: that section providing that if any suit cognizable

^a Appeal from Original Decree No. 4 of 1896 against the decision of Mr. Justice Amcer Ali in Suit No. 809 of 1894.

1896
 ISMAIL
 ARIFF
 v.
 LESLIE.

by the Small Cause Court is instituted in the High Court, and if in such suit the plaintiff obtains in the case of a suit founded on contract a decree for any matter of an amount or value less than 2,000 rupees, * * * no costs shall be allowed to the plaintiff; unless the Judge who tries it certifies that it was one fit to be tried in the High Court. The defendant pleaded limitation as to a large part of the sum claimed. After the passing of Act I of 1895, by section 11 of which Act the words "one thousand" are substituted for the words "two thousand" in section 22 of Act XV of 1882, a decree was made in favour of the plaintiff for the sum claimed; and the learned Judge, without certifying that the case was a fit one to be brought in the High Court, gave the plaintiff costs on scale No. 2. The defendant appealed.

Mr. *Dunne* and Mr. *Chowdhry*, for the appellant, abandoned the plea of limitation; and the only question left for determination was the question of costs.

Mr. *T. A. Apear* (with him Mr. *Pugh* and Mr. *Avetoom*) for the respondent.—There is no vested right to costs in anybody. The plaintiff brought his suit in December 1894; and the moment Act I of 1895 was passed, he could have withdrawn his suit, with leave to bring a fresh suit, and then have brought the fresh suit in the High Court. The Act has a retrospective effect, because it is a matter of procedure that the Act has changed. At the time of bringing the suit, no one had any substantive right in the costs. That being so, this is purely a matter of procedure; and the procedure to be followed is that given by the later Act,—*Bhobo Sundari Devi v. Rakhal Chunder Bose* (1). [TREVELYAN, J.—Were you not under a disability to receive costs?] Yes, at the time the suit was brought; but before the time came for awarding the costs, the Legislature had removed that disability. [MACLEAN, C. J.—Then if the judgment had been delivered on the 31st March 1895, you would have been deprived of your costs?] Possibly, but that is a common result of legislation.

Mr. *Dunne* for the appellant.—The Act is not retrospective. The Legislature intended that the defendant should have the right to be exempt from payment of costs in the event of the decree being against him for a sum smaller than a certain limit.

The terms of the Act show that it could not have been contemplated that suits instituted before the Act should come within a rule of jurisdiction prescribed by the new Act; for, after all, it is not a question of procedure, but of jurisdiction. The new Act must refer only to suits instituted after the 1st April 1895. [TREVELYAN, J., referred to the cases of *Wright v. Hale* (1), and *Republic of Costa Rica v. Evlanger* (2).] Here there is an absolute prohibition of the plaintiff's getting his costs. In the case of *Wright v. Hale* (1) there was no stated rule declaring any right in respect of costs. But the Small Cause Court Act entitles the defendant to exemption from liability in a certain event. To give the plaintiff his costs would be giving him something he was deprived of by the Legislature, and giving it him because he had done what the Legislature forbade him to do. [MACLEAN, C.J.—Does not section 6 of the General Clauses Act apply? TREVELYAN, J., referred to *Deb Narain Dutt v. Navendra Krishna* (3).] Those principles apply here. The new section does not repeal the old one; it merely substitutes a new jurisdiction for an old one.

1896

 ISMAIL
 ARIFF
 v.
 LESLIE.

C. A. V.

The following judgments were delivered by the Court (MACLEAN, C.J., and MACPHERSON and TREVELYAN, JJ.) :—

MACLEAN, C.J.—The only question to be decided on this appeal is whether the plaintiffs are entitled to their costs of the suit.

The suit is one by a firm of attorneys against their client to recover the balance of their bill of costs. The amount recovered is under Rs. 2,000 but over Rs. 1,000. It is contended for the appellant, having regard to section 22 of the Small Cause Courts Act (No. XV of 1882), that the plaintiff's costs ought not to be allowed. That section, so far as is material, was as follows :—

“If any suit cognizable by the Small Cause Court other than a suit to which section 21 applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount of value less than Rs. 2,000, and in the case of any other suit a decree for any matter of an amount or value of less than Rs. 300, no costs shall be allowed to the plaintiff. The foregoing rules shall not apply

(1) 6 H. and N., 227.

(2) L. R., 3 Ch. Div., 62.

(3) I. L. R., 16 Calc., 267 (272.)

1896

ISMAIL
ARIEFF
v.
LESLIE.

to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court."

In the Court below the learned Judge allowed the costs, but did not certify that the suit was one fit to be brought in the High Court. He treated the matter of costs as one for the exercise of his judicial discretion.

If the matter rested only on the above section, it would be clear that the plaintiff could not be allowed his costs in the absence of any such certificate.

The difficulty arises from section 11 of the Presidency Small Cause Courts' Amendment Act (No I of 1895), which came into operation on the 1st April 1895. This substitutes the words "one thousand" for "two thousand" in section 22, above referred to. In the opinion of the learned Judge in the Court below, as the suit had been commenced before the amending Act, the plaintiffs could not be allowed their costs unless in his discretion he allowed them.

What is the effect of section 11 of the repealing Act upon section 22 of Act of 1882? It repeals *pro tanto* the provision as to amount in the old Act, but there is no provision that it should be retrospective in its operation. It is urged for the plaintiff that the repealing Act relates to procedure only, and does not interfere with any substantive right, and consequently that the new Act is retrospective in its operation.

I think, however, that the case comes within the third class of cases stated by Mr. Justice Wilson in delivering the judgment of the Full Bench in *Deb Narain Dutt v. Narendra Krishna* (1). He says: "The third class of cases consists of those in which the law is changed by a mere repeal of a previously existing law, and the repealing enactment contains no special rule for its own interpretation. Such cases are governed by section 6 of the General Clauses Act."

Section 6 of the General Clauses Act says: "The repeal of any Statute shall not affect any proceedings commenced before the repealing Act shall have come into operation." This suit—a "proceeding" within the meaning of that section—was instituted before the repealing Act came into operation. I

(1) I. L. R., 16 Cal., 272.

therefore think the provisions of the repealing Act do not apply to this case, that section 22 of the Small Cause Court Act does apply, and that, as the plaintiff has recovered less than Rs. 2,000 and the Judge has given no certificate, the plaintiff cannot be allowed the costs of the suit. The appeal therefore must be allowed. The appeal also dealt with a point as to the statute of Limitation, but that was abandoned by the appellant's Counsel.

1896

 ISMAIL
 ARIFF
 v.
 LESLIE.

As the appellant therefore has failed as to part of his appeal and succeeded as to the other, there will be no costs of the appeal.

MACPHERSON, J.—I agree with the learned Chief Justice. I think that section 22 of the Small Cause Court Act as it stood unamended by the Act of 1895 applied to this suit. The effect of the amendment was wholly to repeal section 22 as regards all suits in which the amount decreed was less than Rs. 2,000 and over Rs. 1,000, and by section 6 of the General Clauses Act the repeal did not affect the suit which was pending when the repealing Act came into operation. The learned Judge did not certify as required by section 22, and he had no discretion in the matter of costs.

TREVELLYAN, J.—The question of limitation having been abandoned by Mr. Dunne, the only question which we have to decide is as to the costs.

In my opinion section 11 of Act I of 1895 has no application to the present case.

At the time this suit was instituted Act I of 1895 had not been passed, so the alteration of Act XV of 1882, section 22, does not affect this suit. The matter is, I think, concluded by section 6 of the General Clauses Act, and the English cases as to the effect of an alteration in the law of procedure upon pending proceedings have no application.

Under section 22 of Act XV of 1882, the discretion which a Judge possesses as to costs has been taken away. In case of a decree for a sum under Rs. 2,000 the plaintiff is expressly prevented from obtaining his costs, except the Judge who tries the suit "certifies that it was one fit to be brought in the High Court."

I do not understand that in this case the learned Judge has certified in terms of the section. He has treated the case as one

1896

ISMAIL
ARIFFv.
LESLIE.

governed by his ordinary discretion, and has given reasons which would be equally applicable to any case whether tried in the High Court or in the Small Cause Court.

Having regard to the objects of the Act, I think that a certificate can only be given in a case where a Judge considers that the case was not one which ought to be brought in the Small Cause Court. So strictly has this section been construed, that I have never known a certificate given under it. It is not necessary to determine in what class of cases a certificate should be given; but I doubt very much whether the Legislature by the terms of section 22 intended much to extend the powers which they gave to the Judge under section 9 of Act XXIV of 1864, *vis.*, that he could only certify when "by the reason of the difficulty, novelty or general importance of the case or of some erroneous course of decisions in like cases in the Court of Small Causes, the action was fit to be brought in the High Court."

I would hold that the plaintiffs were entitled to no costs in the Court below, and that each party should pay his own costs of this appeal.

Appeal allowed.

Attorney for the appellant: Babu Kedar Nath Mitter.

Attorney for the respondent: Mr. F. M. Leslie.

H. W.

APPELLATE CIVIL.

Before Sir Francis William Maclean, Knight, Chief Justice, and Mr. Justice Danerjee.

1897
Feb. 17.

SUKURULLAH KAZI AND OTHERS (PRINCIPAL DEFENDANTS) v.
BAMA SUNDARI DAS (PLAINTIFF).^a

Land Registration Act (Bengal Act VII of 1876), sections 33 and 78—Suit for rent—Whether it is necessary to enable him to sue for rent that a putnidar should be registered under the Act.

A putnidar is not a proprietor within the meaning of sections 33 and 78 of the Land Registration Act.

^a Appeal from Appellate Decree No. 252 of 1895, against the decree of Babu Nuffer Chandra Bhutta, Subordinate Judge of Hooghly, dated the 30th of November 1894, reversing the decree of Babu Haro Kumar Rai Munsif of Serampur, dated 26th of January 1894.