

(1872) 12 CAL CK 0003
In the Calcutta High Court

Bonomally Nawn

APPELLANT

Vs

T. Campbell

RESPONDENT

Date of Decision : 13-12-1872

Acts Referred:

Citation : (1872) 12 CAL CK 0003

Judgement

Sir Richard Couch, Kt., C.J.—It is stated in the case which has been sent to us that the suit, which on the face of it purports to be a suit for the recovery of a sum over Rs. 500, was originally tried by the First Judge of the Small Cause Court, who found that the plaintiff's cause of action had arisen within the local limits of the Courts jurisdiction. It was, however, found that the plaintiff was only entitled to recover a sum considerably under Rs. 500; and that the balance of his claim had been thrown in, in order to bring his claim within the extended jurisdiction conferred by s. 2, Act XXVI of 1864; The First Judge also found that the defendant was not subject to the jurisdiction of the Court on any of the grounds set forth in s. 28, Act IX of 1850; and being of opinion that the case, as being in reality a claim for less than Rs. 500, fell properly within the provisions of that section, held that he had no jurisdiction to try it. I think taking this finding in connexion with the matters which have been brought before us, and it is agreed are to prove part of the case, viz., the summons, the particulars of the demand contained in the letter, and the bond, that this finding means that the plaintiff, in order to give jurisdiction to the Small Cause Court, claimed as damages sums which by law he could not recover--which he could not be entitled to at all--and added them to his claim for that purpose. In such a case as this, I think the Small Cause Court has not jurisdiction. The plaintiff could not give jurisdiction, merely by adding to his claim sums which he could not under any circumstances be entitled to recover. The decision of Wells, J., in the case referred to *Sikhur Chund v. Sooringmull*, 1 Hyde, 272 is quite in accordance with this view because it is stated there that the suit "was a suit to recover Rs. 848-12 for damages from the defendants, who had failed to fulfill their contract," and the learned Judge said that "the plaintiffs had, owing to the evidence adduced by them being

defective, failed to prove that they had sustained damages to a larger amount than Rs. 75." The case was not that they had put forward a claim for damages which they could not properly recover, but the evidence being defective, they could not succeed in getting more than Rs. 75; and the learned Judge held that in such a case the Court had jurisdiction under the words in the Letters Patent, cl. 12, "in which the debt, or damage, or value of the property sued for does not exceed Rs. 100." There the suit was bond fide brought for a sum exceeding Rs. 100, and the jurisdiction of the Court could not be taken away because the evidence was defective. The other part of the judgment as to the suit being brought in bad faith, and the Court being able to compensate the defendant by awarding costs against the plaintiff, was extra-judicial. The Court's having such a power does not affect its jurisdiction. Has the plaintiff in this case increased his claim by adding to it an amount which could not be included in it? If he has, he ought not to be allowed by so doing to give the Small Cause Court jurisdiction, and we must say that in such a case as that the Small Cause Court has no jurisdiction. As the plaintiff has done that, and has taken the opinion of this Court on the doubts which arose in the minds of the Judges of the Small Cause Court, we must say that Mr. Kennedy's client must pay the costs of reversing this case for the opinion of this Court.

(1) Act IX of 1850, s. 28.--"All persons shall be deemed within the jurisdiction of the Court who dwell or carry on their business, or work for gain, within the district of the Court at the time of bringing the action, or who did so dwell or carry on their business, or work therein at the time when the cause of action arose, or within six months before the time of bringing the action for causes of action which arose within the same time."

(2) Act XXVI of 1864, s. 2.--"The jurisdiction of the Courts held, or to be held, under the said Act IX of 1840, shall extend to the recovery of any debt damage, or demand exceeding the sum of Rs. 500, but not exceeding the sum of Rs. 1,000, and to all actions in respect thereof * * * * provided that the cause of action shall have arisen, or the defendant at the time of bringing the action shall dwell or carry on business or personally work for gain within the local limits of the jurisdiction of the Court."