

MEERA SAIBO v. OMER LEBBE.

D. C., Batticaloa, 1,868.

1899.

November 2.

Action for the whole amount of the bond instead of the moiety due—Unnecessary costs—Liability of plaintiff to pay defendant the extra costs of action in wrong class.

If a plaintiff exaggerates his claim and thereby causes unnecessary expense to the defendant, the defendant is entitled, whatever the result of the action be, to be recouped these unnecessary costs.

THIS was an action brought on the 28th March, 1898, for the recovery of Rs. 1,125 said to be due upon a deed wherein defendant acknowledged himself to be indebted to the plaintiff in that sum. Rs. 562.50 hereof was payable in September, 1897, and the balance Rs. 562.50 was payable in September, 1898. The District Judge entered judgment for the plaintiff for the first instalment, which became due on September, 1897, viz., Rs. 562.50, and costs.

Defendant appealed.

Sampayo, for appellant.

Wendt, for respondent.

1899.
November 22.

The Supreme Court affirmed the judgment on the merits, but made order as follows as to the question of costs :—

22nd November, 1899. BONSER C.J.—

With regard to the question of costs, the action was brought admittedly for a larger amount than was due on the bond. The bond was for Rs. 1,125, and the plaintiff admits that at the date of action only half of that sum was due; and that he was only entitled to judgment for half of that sum. The result of his bringing the action for the whole amount of the bond instead of for the moiety which was due was to involve, not only himself, but the defendant in unnecessary costs: the defendant had to affix stamps to his pleadings, his notices to witnesses, and the other documents necessary for his defence on a higher scale than would otherwise have been the case.

The question is one of some importance to litigants in this Island, where the practice is different to that prevailing in England. In England the Court fees do not depend on the value of the relief sought, so this question does not arise there. But here this question must frequently arise, and we think it right to lay down that if a plaintiff exaggerates his claim and thereby causes unnecessary expense to the defendant, the defendant is entitled, whatever the result of the action be, to be recouped those unnecessary costs.

The order in the present case will be that the appeal be dismissed with costs, as the appellant has failed on the merits of his appeal, but we direct the plaintiff to pay to the defendant any extra costs which may have been occasioned by his bringing the action in the wrong class. The defendant will set off those costs against those which he will have to pay the plaintiff.

WITHERS, J., concurred.

