

IN THE SUPREME COURT OF FIJI
Civil Appeal No. 2 of 1958

GANGA PRASAD

Appellant

v.

MOTIBHAI AND COMPANY

Respondent

Case stated by Magistrate at the request of a party to a civil action:

The appellant had a right to appeal against the Magistrate's judgment under section 37 of the Magistrates' Courts Ordinance, but applied for a case stated under section 38. The Magistrate stated a case which was dealt with as though it was an appeal.

Held.—Section 38 of the Magistrates' Courts Ordinance entitles a Magistrate to state a case, involving a question of law, of his own volition but the remedy of an aggrieved party to a civil action before a Magistrate's court is to appeal to the Supreme Court under section 37 of the Ordinance.

R. D. Patel for appellant.

V. R. Sharma for respondent.

LOWE, C.J. [5th June, 1958]—

In this case it clearly came to the notice of the learned Magistrate that a third party was making claim to the moneys which had been paid into Court by the Colonial Sugar Refining Company Limited. The fact that the appellant through his Counsel had been served with a Notice of Motion is in my view quite incidental and the question of the time which should elapse before the hearing of the Notice of Motion has little bearing on the matter which was then before the Court, except that the Notice did in some measure add to the information given to the Court by Counsel for the respondent at the hearing.

What the Magistrate was concerned with was that it was made to appear to him that a third party had a claim and in my view he rightly took the action he did under Order 35 Rules 36 and 40.

The appeal by way of case stated is dismissed with costs to the respondent.

In answer to a question from the Court Mr. Patel has stated that he applied to the Magistrate asking him to state a case and this was done. In my view this amounts to an appeal by the appellant who had his remedy by way of such appeal. It seems to me that section 37 of the Magistrates Court Ordinance makes sufficient provision in that respect. Section 38 provides for cases to be stated but they are intended to arise from the Magistrate's own volition and are expressly stated not to be in prejudice to such right of appeal. I do not think the Ordinance shows an intention of allowing both an appeal and a case stated at the request of an appellant. For these reasons I have allowed costs which are fixed at £10 10s. 0d.