

Subba Rau Vs. Virappa

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Court : Chennai

Decided On : Apr-20-1882

Reported in : (1882)ILR5Mad162

Judge : Kindersley and ;Muttusami Ayyar, JJ.

Appellant : Subba Rau

Respondent : Virappa

Judgement :

Kindersley, J.

1. In this case both of the Courts below have found that the defendant brought a criminal charge against the plaintiff with malice and without reasonable or probable cause. It has been argued that the District Munsif in awarding damages was wrong in taking into consideration the fees which the defendant paid to vakils employed in his defence, and we have been referred to Gajpathi Rau v. Narasing Rau 6. M.H.C.R. 89 as laying down the rule that in no case should the fees of counsel be taken into consideration in assessing the damages in such suits. But that decision does not really lay down any such general rule. In that case counsel had probably been brought at a large expense to Vizagapatam from Madras; the Lower Court had allowed as much as Rs. 50,000 by way of damages; and one of the Judges in reducing the damages remarked that the fees of counsel (which must have been very large) were not a proper element for consideration. There are several English

cases which show that the plaintiff in such a suit as this may recover his costs properly incurred in defending himself against the criminal charge. They will be found collected in Roscoe's Nisi Prius under the head of ' Malicious arrest.'

2. Having regard to all the circumstances of this case, we do not think that the amount of damages upon which both of the Lower Courts have agreed is excessive, nor does it appear that the Courts have taken into consideration any element of damage which ought to have been excluded.

3. We dismiss this second appeal with costs.

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