

Freck Vs. Harley

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Court : Kolkata

Decided On : Sep-01-1880

Reported in : (1881)ILR6Cal418

Judge : Richard Garth, C.J. and ;Pontifex, JJ.

Appellant : Freck

Respondent : Harley

Judgement :

Richard Garth, C.J.

1. It appears to us that the real answer to this suit was rather a matter of law than of jurisdiction, but we think that the questions referred to should be answered as follows:

2. (i) A plea to the jurisdiction is a plea in bar; and, therefore, the proper judgment would be, that the suit be dismissed; but whatever may be the form used, it should be stated that the suit abates or is dismissed 'for want of jurisdiction,' otherwise the plaintiff might be prejudiced when he brings his suit in another Court.

3. (ii) We think that the Court has power in such a case to award costs to the defendant. The question of jurisdiction is one which the Court is bound to try, and as the plaintiff invites the trial by bringing his suit, it is only right that he should pay costs if he turns out to be wrong. It appears to us that the cases of Lawford v.

Partridge (1 H. & N., 621) and Peacock v. The Queen (4 C. B., N. S., 264, at p. 278) have been virtually overruled by the case of McIntosh v. The Lord Advocate (L. E., 2 App. Cas., 41, at p. 78).

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