The bringing a civil action does not import that any corrupt agreement has been entered into or that forbearance from criminal proceedings has been corruptly purchased.

The institution of a suit is not inconsistent indeed with the intention eventually to have recourse to criminal proceedings, and I agree in the ruling in 6 W. R. Civil References, page 9, where it was held by PEACOCK, C.J., and JACKSON, J., that there is no law in the mofussil which requires an injured person in any case to institute criminal proceedings before bringing his action. I think there was material irregularity in the trial of the case, and I would set aside the Judge's order and direct the re-trial of the appeal.

Kernan, J.—A cause of action arose to the plaintiffs from the act of the defendant. The judgment of the Calcutta High Court is in point. I agree to set aside the decree of the Lower Appellate Court and remand the case. The costs will abide the result.

NOTE.—*Vide Wells* v. *Abraham*, L. R., 7 Q. B., 554.

NOTES.

[I. "MERGER OF TORT IN FELONY."

This rule of English Law to the effect that when a person is injured in his civil rights by an act which is also a felony or misdemeanour of public nature, cannot maintain a civil action in respect of such civil right until he prosecutes the offender is not applicable to India as being foreign to the Hindu or Mahomedan Law and as not having been introduced into it :—(1881) 4 Mad. 410.

II. HOW FAR PRINCIPLES OF ENGLISH LAW ARE APPLICABLE TO INDIA :—

See our notes to 1 M. I. A. 175=1 I. R. 80.]

[3 Mad. 9.]

APPELLATE CIVIL.

The 15th March, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., C. J., AND MR. JUSTICE KINDERSLEY.

Ebrahim Saib.....(Defendant) Appellant

versus

Nagasami Gurukal.....(Plaintiff) Respondent.*

Proprietory dues—Small Cause Court jurisdiction—Res judicata.

A suit for Russum (a proprietory due), not claimed as rent nor under a contract but by custom, payable by cultivators in occupation of the land either as proprietors or ryots, is not of a nature triable by a Small Cause Court.

IN this case plaintiff as trustee of a pagoda sued the defendant for 300 rupees payable as '*Russums*' (proprietory dues) to the **[10]** pagoda by persons occupying the land as cultivators, whether as ryots or proprietors.

Defendant denying plaintiff's right to these dues, plaintiff pleaded that the matter was '*res judicata*' by reason of a former suit in 1873, in which plaintiff had claimed and been awarded the same dues from defendant for other years.

* Second Appeal, No. 744 of 1880, against the decree of A. L. Lister, Acting District Judge of Chingleput, confirming the decree of the District Munsif of Tiruvallur, dated 13th August 1880.

In answer to this plea defendant alleged that the lands on account of which the dues were now claimed belonged in part to his brother and son.

The Munsif found that all the lands were in defendant's possession either on his own account or as head of the family and gave the plaintiff a decree for the *Russums* payable on account of such lands.

On appeal this decision was confirmed by the District Judge.

In second appeal a preliminary objection was taken as to the Court's jurisdiction by the respondent.

Mr. *N. Subramanyam* for the Appellant.

C. Ramachandra Rau Saib for Respondent.

The arguments sufficiently appear in the judgment of the Court (TURNER, C.J., and KINDERSLEY, J.).

Judgment :—The respondent takes a preliminary objection that in this suit no second appeal lies, as the suit is of a nature triable by, and the subject-matter within the pecuniary limits of the jurisdiction of, a Small Cause Court.

Certain proprietory dues are the subject-matter of this suit. They are claimed as payable by persons in the occupation of land as cultivators, whether such persons are proprietors or ryots. They are not claimed as rent nor under a contract, but by custom. We are of opinion then that the suit was not of a nature triable by a Court of Small Causes and proceed to dispose of the appeal.

The appellant urges that the finding of the Lower Appellate Court, that all the lands in respect of which dues are claimed were held jointly by the family of which he is the head, does not warrant the decree. We must allow the validity of this objection. If it be found that other persons with the appellant cultivated the lands on joint account, these persons jointly with the appellant are liable for the cesses and should have been made parties. If, on the other hand, as the appellant alleges, the members of his family cultivate different lands on their separate [11] accounts, they are severally liable for the payment of duties customarily paid in respect of such lands only as they may have respectively held. If it be found that the appellant is solely liable in whole or in part to the claim, we are not prepared to say that the right of the respondent to collect the dues—a right which was directly in issue in the former suit—has not, by the decision of that suit, become *res adjudicata*.

We set aside the decree of the Lower Appellate Court and remand the suit to that Court that the appeal may be reheard. The costs of this second appeal will abide and follow the result.