On these facts it may be found that he conspired to commit the offence, and did an act which facilitated the commission of the offence and thereby facilitated it. Inasmuch as the sentence is not in excess of that to which the accused would be subject for abetment of the forgery of a valuable security the conviction is affirmed.

[3 Mad. 6.]

APPELLATE CIVIL.

The 14th March, 1881.

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE KERNAN.

Viranna and others.....(Plaintiffs) Petitioners

versus

Nagayyah.....(Defendant) Counter-Petitioner.*

Malicious prosecution—Civil Suit without prior prosecution of Defendant—Compounding Offence.

A criminal prosecution for an offence under Section 211, Indian Penal Code (false charge), is not a condition precedent to the right to sue for damages.

The bringing of a Civil Suit imports no corrupt agreement or compounding of the offence in such a case.

Shama Churn Bose v. *Bhola Nath Dutt* followed (6 W.R., Civ. Ref., 9).

[7] IN this case the plaintiffs sued for damages for malicious prosecution.

The defendant lodged a complaint against plaintiffs, before the Sub-Magistrate of Tenali in 1878, and the plaintiffs were convicted under Sections 143 and 379 of the Penal Code of being members of an unlawful assembly and of theft. On appeal this conviction was quashed by the Joint Magistrate.

The Munsif found that the complaint was false and gave the plaintiffs Rs. 200 damages.

The defendant appealed.

The material portion of the Judgment in appeal was as follows:—

"The decision in the case must primarily depend on whether the defendant had reasonable and probable cause for instituting the prosecution in the Court of the Second-class Magistrate. That he had is supported by the finding of that Magistrate; that he had not may be gathered from the judgment of the Joint Magistrate. The facts are very similar to those in Appeal 73 of 1866, *Bapuraju* v. *Chinna Vencaya* (3 M. H. C. R., 238), in which the Judge remarked: 'We do not know of any instance of a suit of this kind being successfully maintained after the conviction of the plaintiffs by the sentence of one competent tribunal.'

"There is, however, another objection to the recovery of damages by plaintiffs. Their allegation is that the defendant, with intent to cause injury to them, falsely charged them with having committed an offence, and if he did

*C. M. P. 648 of 1880 against the decree of D. Buick, Acting District Judge of Kistna, reversing the decree of the District Munsif of Guntur, dated 23rd August, 1880.

so he clearly committed an offence under Section 211* of the Penal Code. Such being the case, it is incumbent on plaintiffs to satisfy public justice before seeking their civil remedy. On this point the observation of the High Court of Bombay in *Reg.* v. *Rahimat* (I. L. R., 1 Bom., 147) are very pertinent.

* * * *

"The result appears to be that wherever the words voluntarily, intentionally, fraudulently, dishonestly and others, whose definition involves a particular intention, enter along with a specified act into the description of an offence, the offence not being one **[8]** 'irrespective of the intention,' is not one which the exception to section 214 of the Indian Penal Code by itself allows to be compounded without the parties incurring the penalties prescribed by that and the next preceding section. The offence to admit of compromise must be one in this sense irrespective of the intention, and it must be one for which a civil action may be brought at the option of the persons injured, instead of criminal proceedings.

"If this reasoning is correct, it follows that as the offence of instituting a false charge of an offence with intent to injure is one which cannot lawfully be compounded, the plaintiffs were bound to satisfy the requirements of public justice by a criminal prosecution before seeking their private remedy through a suit for damages. No prosecution was instituted, and until that has been successfully carried through, damages cannot be recovered by a civil action."

Against this decision the plaintiffs presented a petition for revision under Section 622, Civil Procedure Code.

T. Subba Rau for Petitioner.

The Court (INNES and KERNAN, JJ.) delivered the following **Judgments**:—

Innes, J.—The judgment of the Second-class Magistrate was no doubt some evidence of reasonable and probable cause, but was not conclusive, and it was necessary that the effect of the judgment in appeal should have been also considered.

The case referred to in 3, Madras High Court Reports, page 238, is no authority for excluding the consideration of the judgment of the Appellate Court, but distinctly the contrary. In page 240 the Judges say: "We do not mean to say that in every case the judgment of one competent tribunal against the plaintiff should be considered a conclusive answer to the suit, for it is manifest there may be circumstances which would necessarily deprive it of any such effect."

Upon the other point the question of whether the compounding an offence is or is not lawful is entirely independent of the question whether or not a civil action for damages for an act which amounts to a punishable offence must be preceded by a criminal prosecution.

[9] "Compounding" imports a corrupt agreement to stifle a prosecution or to forbear prosecuting, and it is on this account against the policy of the law to allow offences to be compounded.

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*[Sec. 211:—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine].

False charge of offence made with intent to injure.

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.