

According to my view this explanation is meant to apply to a case of this kind, where the defendant has a defence, which, if he had so pleased, he might and ought to have brought forward, but as he did not bring it forward, the suit has been decreed against him. The explanation means to say that, under such circumstances, the defendant is as much bound by the adverse decree as if he had set up the defence, and that he is equally estopped from setting up that defence in any future suit under similar circumstances; that appears to me to be the sort of case which expl. ii is intended to meet; it certainly was never intended to enable a party to treat a point as having been decided in his favor in a former suit, which was in fact not so decided, and which it was not necessary for the purposes of the suit to decide at all.

The appeal must be dismissed with costs.

*Appeal dismissed.*

*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Mitter.*

DURGA PERSHAD (PLAINTIFF) v. ASA JOLAHIA (DEFENDANT).\*

*Suit for Damages for Personal Injury—Pecuniary Damage—Mofussil Small Cause Courts Act (XI of 1865), s. 6—Jurisdiction of Mofussil Small Cause Courts.*

By s. 6 of Act XI of 1865, suits to recover damages for personal injury cannot be brought in a Mofussil Small Cause Court, unless actual pecuniary damage has resulted from the injury. That section excludes from the jurisdiction of the Mofussil Small Cause Courts suits for defamation, infringement of right, and the like, where no actual pecuniary damage has been sustained by the plaintiff, and where the measure of damages to be awarded is often a question of some nicety: but does not exclude suits for actual damages merely because, besides the actual pecuniary loss sustained, the plaintiff asks for something additional for loss of character, or other indefinite injury.

THIS was a suit brought in a Civil Court to recover, as damages, Rs. 104-15 annas on account of costs incurred in certain criminal

\* Special Appeal, No. 198 of 1879, from a decision of Baboo Poresh Nath Banerjee, Subordinate Judge of Patna, dated the 1st November 1878, reversing the decision of the Sudder Munsif of that district, dated the 28th February 1878.

1880  
GHURBOHIT  
AHIR  
v.  
RAMDUT  
SINGH.

1880  
June 7.

1880  
 DURGA  
 PRASAD  
 v.  
 ASA JOLAHA.

proceedings, and Rs 125 for wrong done to the character and reputation of the plaintiff.

The plaintiff stated that, under a deed dated the 19th April 1876, he had become the purchaser of a certain house, which previously had belonged to some of the defendant's relatives; that the defendant, being annoyed at the purchase, maliciously lodged a complaint against him in the Criminal Court, alleging trespass; and that, in order to defend himself against this charge, he had engaged muktears and pleaders at a cost of Rs. 104. Eventually the charge was dismissed, and the plaintiff then brought this suit in the Civil Court of the Munsif of Patna.

The defendant contended that a suit for damages for defamation and costs was not cognizable in the Civil Courts, and that, under s. 6 of Act XI of 1865, such a suit should have been brought in a Court of Small Causes; and further, that the plaintiff had suffered no injury in reputation.

The Munsif found that the suit would lie in a Civil Court on the authority of *Kalikummar Mitter v. Ramgati Bhattacharjee* (1); that the defendant's charge in the criminal proceedings had been found to be false, and that, therefore, the plaintiff was entitled to damages; and he therefore gave the plaintiff a decree.

The defendant appealed to the District Judge, who held that the plaintiff should have brought the suit in a Court of Small Causes, instead of in the Munsif's Court; and therefore allowed the appeal.

The plaintiff appealed to the High Court.

Baboo *Obinash Chunder Banerjee* for the appellant.

No one appeared for the respondent.

The judgment of the Court (GARTH, C. J., and MITTER, J.) was delivered by

GARTH, C. J.—This case seems to us very clear. The suit is brought to recover damages for a malicious prosecution, and the plaintiff says, that besides the actual costs to which he has been put by the malicious proceedings, and which amount

(1) 6 B. L. R., Ap., 99; S. C., 16 W. R., 84.

to Rs. 104-15, he is also entitled to an additional sum for damages to his reputation. The question is, whether this is a case which may be tried in a Small Cause Court.

Section 6 of Act XI of 1865 says, first, that a suit may be brought in the Small Cause Court for damages, but that no action shall lie in such Courts on account of an alleged personal injury, *unless actual pecuniary damage has resulted from the injury*; that means, that if actual pecuniary damage has resulted from the injury, then the suit may be brought in the Small Cause Court.

Now, in this case, there is no doubt that actual pecuniary damage has resulted from the injury, because the plaintiff claims a sum of Rs. 104-15, which he says he has had to pay for costs. It is true he claims something more; he claims an undefined sum for loss of character, but we think that, looking both to the language and the meaning of s. 6, this suit should have been brought in the Small Cause Court. It is only in cases where no actual damage at all has been sustained, such as suits for defamation, or for infringement of rights, that this jurisdiction of the Small Cause Court is excluded. These are very frequently cases of difficulty, and the question of damage itself, where no actual loss has been sustained, is often a matter of much nicety?

If the exception in the Act applied to such cases as the present, where, besides his actual loss, the plaintiff tries to recover something additional for loss of character, an immense number of suits would be excluded from the Small Cause Court, which clearly were intended to be tried there; as, for instance, where a man brings a suit against his neighbour for pulling down a wall, and, besides the cost of rebuilding the wall, which would be the ordinary damage in such a case, claims something indefinite besides on account of aggravation. It would be obviously easy for a plaintiff to invent some indefinite claim in every case for the purpose of evading the provisions of s. 6.

We think, therefore, that the Judge below was quite right in holding that this case was cognizable by the Court of Small Causes, and we dismiss the appeal, but without costs, as the respondents do not appear.

*Appeal dismissed.*

1880

DURGA  
PERSHAD  
v.  
ASA JOLANA.