revenue which was sought to be recovered was a charge. It is not shown in this case that anything more than the right, title and interest of the judgment-debtor in Original Suit 75 of 1866 was liable to be sold. This case falls, therefore, to be decided on the principle laid down in *Venkata Narasiah* v. *Subbamma*, and *Sadayśpa* v. *Jamuna Bhái* which were not overruled by the decision in *Suryanna* v. *Durgi*.

We see no reason to think that the Subordinate Judge was in error in presuming that the respondents got into possession under the first respondent's father. The trustees, it must be observed, pleaded that Tarathu was never in possession, and that the land was the ancient jenm of the church and that both of those statements were found to be untrue.

We set aside the decree of the Subordinate Judge and restore that of the District Múnsif. The respondents will pay the appellant's costs both in this Court and in the Lower Appellate Court.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

ADAMSON (DEFENDANT No. 1), APPELLANT,

and

ARUMUGAM AND OTHERS (PLAINTIFFS), RESPONDENTS.*

1886. March 4. July 12.

Suit for obstruction of highway—Special damage—Civil Procedure Code, s. 30.

The rule of English law that no action can be maintained by one person against another for obstruction to a highway without proof of special damage should be enforced in British India as a rule of "equity and good conscience."

Section 30 of the Code of Civil Procedure was not intended to allow individuals to sue on behalf of the general public, but to enable some of a class having special interests to represent the rest of the class.

APPEAL from the decree of K. R. Krishna Menón, Subordinate Judge at Tinnevelly, reversing the decree of V. Srinivásácharlu, District Múnsif of Tuticorin, in Suit 188 of 1883.

The plaintiffs, Arumugam Pillai and 8 others, as representatives of the villagers of Podiamputhúr, sued the Revd. Thomas

* Second Appeal 792 of 1885.

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Adamson, to obtain a declaration that certain land enclosed by him was public property, to recover possession thereof, and to remove an obstruction placed on a certain road. The plaintiffs alleged that the land was used by the villagers in common for a cartstand and other purposes.

The defendant pleaded that the land was the property of a Society called the 'Society for the Propagation of the Gospel in Foreign Parts.'

The Múnsif issued a proclamation under s. 30 of the Code of Civil Procedure to the villagers.

Upon this twelve persons appeared, opposed the claim and were made defendants.

The Múnsif found that the land belonged to a Zamindár, and that a road over it which had been obstructed was vested in the Local Fund Board under s. 8 of the Madras Act IV of 1871.

The suit was dismissed on the ground that the Court had no jurisdiction to entertain it, and to issue an injunction to defendant No. 1 to re-open the road for public use. The Múnsif held that the plaintiffs' remedy was by indictment only.

On appeal, the Subordinate Judge held that, as the plaintiffs were the major portion, if not the whole body of the public who have occasion to use the thoroughfare, they sustained special damage from the obstruction. As to the right to the land the Subordinate Judge held that plaintiffs claimed an easement and had not lost their right by non-possession for 20 years. A decree was passed directing defendant No. 1 to remove the obstruction he had raised on the road.

Defendant No. 1 appealed.

Mr. *Powell* for appellant.

Rámachandra Ráu Saheb for respondents.

The Court (Collins, C.J. and Parker, J.) delivered the following

JUDGMENT:—This was an action for the obstruction of a public highway, and the appeal is against the judgment of the Subordinate Judge in deciding that the plaintiffs had a cause of action and in ordering the removal of the obstruction. No proof of special damage was given by the plaintiffs.

The English law upon the subject is that no action can be maintained by an individual against another for obstruction to a highway without proof of special damage and it is founded on

adequate reasons of public policy. Though no Madras case has been cited at the bar, we find that the Indian Courts have generally adopted the English rule. The whole subject is exhaustively discussed in the judgment of the Bombay High Court in *Satku Valad Kadir Sausare* v. *Ibrahim Agá Valad Mirzá Agá*(1) with which we entirely agree, and we find that the High Courts at Calcutta and Allahabad have come to the same conclusion, *Raj Koomar Singh* v. *Sahebzada Roy*,(2) *Karim Baksh* v. *Budha*,(3) *Fazal Haq* v. *Maha Chand*,(4) per contra *Basaruddin Bhuiah* v. *Bahar Ali*,(5) *Askâr Mea* v. *Subdar Mea*,(6) have been quoted. We find, however, that in the first of these the Magistrate held that *primâ facie* the road was not a public road, but had been a road through private land and was given up by special arrangement.

In the latter case the Magistrate held it was doubtful whether there ever had been a public road in the place at all. These cases therefore do not really conflict with the earlier rulings of the Calcutta Benches, *Burcda, Pershad Moostafee* v. *Gora Chund Moostafee*,(7) *Raj Luckhee Debia* v. *Chunder Kant Chowdhry*,(8) *Trilochun Doss* v. *Gugun Chunder Dey*.(9) It may well be that when a Magistrate finds that it is doubtful whether there is or has been a public road at all, he may refuse to make an order under the Criminal Procedure Code until the complainant has established the fact by a suit in a Civil Court alleging special damages.

It was urged upon us that the Indian Courts should be chary of applying English common law doctrines to the very different society which exists in this country, and we were referred to the case of *Shama ChurnBose* v. *Bhola Nath Dutt*.(10) In that case the Court allowed a civil action for the seizure of a cow notwithstanding that the act amounted to theft, and it was urged that the party injured by the felonious act should first satisfy the justice of the country with respect to the public offence before seeking civil redress for himself. That objection was based upon the English law of felony which does not obtain in this country. The rule that a man who may have committed some public injury shall not

(1) I.L.R , 2 Bom., 457.
(2) I.L.R., 3 Cal., 20.
(3) I.L.R., 1 All., 249.
(4) I.L.R., 1 All., 557.
(5) I.L.R., 11 Cal., 8.
(6) I.L.R., 12 Cal., 137.
(7) 12 W.R., 160.
(8) 14 W.R., 173.
(9) 24 W.R., 413.
(10) 6 W.R., (C.R.) 9.

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be harassed by innumerable actions by persons who have not sustained any damage embodies equitable doctrine and should, we think, be enforced in this country in whose Courts the rules of equity and good conscience apply.

Nor do we think that the observance of the formalities of s. 30 of the Code of Civil Procedure will enable the plaintiffs to bring this suit. That section is rather designed to allow one or more persons to represent a class having special interests than to allow such persons to sue on behalf of the general public to which the notices prescribed by that procedure would be inapplicable.

The plaintiffs' suit must therefore fail. Though we are constrained to dismiss it on this technical ground, we cannot but express our regret that the litigation should have been persisted in after the concurrent finding of two Courts that the road in dispute was a public road and that plaintiffs were entitled to use it. We must reverse the decree of the Lower Appellate Court and restore that of the District Múnsif, which dismisses the suit. But we will make no order as to costs.

ORIGINAL CIVIL.

Before Mr. Justice Parker.

1886. July 29.

ADMINISTRATOR-GENERAL OF MADRAS,

and

ANANDÁCHÁRI AND OTHERS.*

Hindú Law—Marriage—Consummation—Succession Act, 1865—Succession to estate of intestate Native Christian.

According to Hindú law, a marriage between Brâhmans is binding, although the consummation ceremony or consummation never takes place.

If a Hindú becomes a convert to Christianity and dies intestate, succession to his estate is governed by the Indian Succession Act, 1865.

A.K., a Brâhmân, went through a Hindú marriage ceremony with S, a Brâhman girl of eight years of age, in 1850. The marriage was never consummated nor was the consummation ceremony performed.

In 1851, A.K. was converted to Christianity. S refused to live with him, because he was an outcaste, and in 1857 S renounced all claims on him or his estate.

In 1858, A.K. went through a Christian form of marriage with M. In 1881,

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* Civil Suit No. 333 of 1885.