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registration of the transfer and got his transfer recognized by the Company.

Second Appeals Nos. 1719 and 1773 of 1919 are allowed with costs throughout and Second Appeal No. 1626 of 1919 is dismissed with costs of second defendant throughout.

DEVADOSS, J.

DEVADOSS, J.—I agree.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Venkatasubba Rao.

1922, February, 3.

SANKUNNI (DEFENDANT), APPELLANT,

v.

SWAMINATHA PATTAR (PLAINTIFF), RESPONDENT. *

Headmaster and pupil—Unruly conduct of pupil—Power of headmaster to inflict moderate corporal punishment—Rule 59 A of Educational Rules, effect of.

It is within the powers of the head of a school to inflict moderate and reasonable punishment on a boy, such as a couple of smacks on the cheek, for correcting unruly conduct or breaches of discipline.

The Educational Rules which provide that " corporal punishment shall not be inflicted except in a case of moral delinquency or flagrant insubordination and shall be limited to six cuts on the hand " do not prohibit or regulate the petty corrections such as that in question which are necessary for maintaining the ordinary discipline of a school.

APPEAL against the decree of C. V. KRISHNASWAMI AYYAR, Subordinate Judge of South Malabar at Palghat, in Original Suit No. 18 of 1918.

* Appeal Suit No. 158 of 1920.

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The facts are stated in the judgment. The defendant preferred this Appeal.

C. Madhavan Nayar, with *D. A. Krishna Variar*, for appellant.—A teacher can inflict such punishment on his students as their father can. The Educational Rules do not limit the usual power of the head of an institution to inflict moderate corporal punishment for unruly conduct. Reference was made to *Mansell* v. *Griffin*(1), where a similar rule was in question and the cases quoted therein: *Regina* v. *Hoplin*(2), *Fitzgerald* v. *Northcote*(3), *Hutt* v. *Governors of Haileybury College*(4), Halsbury's Laws of England, Volume 17, page 107, Volume 27, page 876, Volume 12, page 17, Schouler's Domestic Relations, 5th Edition, section 244, Eversley's Domestic Relations, 3rd Edition, pages 509 and 510. The limitation is that the punishment must be reasonable in the circumstances and must not be the result of malice or whim or likely to cause danger to life or limb. The evidence shows that the student was unruly in his behaviour, that the punishment was necessary, bona fide and moderate. In any event defendant should not have been asked to pay half of plaintiff's costs.

A. Krishnaswami Ayyar, with *N. Rama Ayyar*, for respondent.—A teacher cannot inflict all the punishments which a father can. Even if he can, there was no justifying occasion for the punishment. The boy was not responsible for the disturbance in the school. He was not solely responsible for it and he was punished for the misconduct of others. Rule 59-A of the Educational Rules indicates when and in what manner punishments can be inflicted. The cases quoted by the appellant explained.

OLDFIELD, J.

OLDFIELD, J.—Personal matters and allegations of ulterior motive have entered unduly into the pleadings

(1) [1908] 1 K.B., 160. (2) (1860) 2 F. & F., 202.
(3) (1865) 4 F. & F., 656. (4) (1887) 4 T.L.R., 623.

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in and conduct of this case in the lower Court. But the facts and the considerations with which we are concerned for the purpose of this Appeal, can be stated with very little reference to them. The defendant, Principal of what at the date in question was the Victoria College, but is now a Government College at Palghat, appeals against a decree awarding to plaintiff, a pupil in the High School attached thereto, Rs. 150 as damages for an assault. At the trial two questions were raised, on which very little has been said here. For it is not seriously disputed that defendant had on the occasion in question the powers, ordinarily exercised by the headmaster of the school, to inflict corporal punishment or that he is not proved to have done more than he himself admits, given plaintiff "two smacks" with his hand on his cheek. We are asked to hold either that in the circumstances of the case the infliction of this chastisement was within defendant's powers and he is not liable for damages at all, or that, if he is so liable, the damages awarded are excessive; and also that the award to the plaintiff of half the costs of the suit is unsustainable. The Memorandum, so far as it has been pressed by plaintiff, is against the award of damages as inadequate and will be dealt with the Appeal.

The circumstances, as alleged by plaintiff, are that on 15th March 1918, the last day of the current term at the end of the last working period, the students including plaintiff in Form IV B demonstrated their satisfaction by clapping their hands in a manner, which we believe to be usual in Indian schools and which according to the evidence was usual at Palghat. The demonstration however in the opinion of defendant, who was in the corridor, went beyond what was permissible and on going to the class room he found plaintiff in his place near the door with two other boys shaking a reversible desk,

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which, already according to the evidence, was in a rickety condition. The other two boys ran away, but plaintiff went on shaking the desk, and defendant then inflicted the "two smacks" already referred to, saying "what do you mean? clear out." The account, which we are asked on plaintiff's behalf to accept, is that this violence was used unreasonably to check a mere display of school-boy high spirits, which was sanctioned by custom; and that, if defendant, as he says, before taking action, called to the class "stop that," plaintiff could not and did not hear him. On the last point, as on others of detail, clear evidence, on which a distinct conclusion can be reached, is not and is not likely to be forthcoming, since events followed each other quickly and some at least of the witnesses were excited. But there is, on the other hand, clear support for what defendant's account generally entails, that the line between mere exuberance and rowdyism was transgressed and that a substantial breach of discipline was in question.

Defendant, a teacher of twenty-three years' experience, who has reached the head of his profession and to whom nothing resembling malice is now imputed, deposed that there was a tremendous noise due not only to clapping of hands, but also to drumming on the desks, hooting, whistling and shrieking; and the addition of these gave the whole thing the appearance of rowdyism. He was so impressed by this as the climax of other similar incidents that he issued a circular, Exhibit B, to his staff on the subject that afternoon. He is clear that plaintiff was deliberately attempting to damage the desk he was sitting at by shaking it, and the necessity for his at once stopping an act of thoughtless mischief to school property is easily intelligible. For his evidence corroborated by that of the headmaster, C.W.1, who saw the desk shortly after, is that one screw belonging to it at least was

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wanting and one was without a nut; and such shaking would presumably loosen its parts still further. 2 to 5 defendant's witnesses, other masters in classes adjacent to plaintiff's, speak to an exceptional uproar there, the former referring to shouting, shrieking, and whistling. Plaintiff is, as his statements regarding other occurrences show, an untrustworthy witness. The evidence of 6 and 7 plaintiff's witnesses, his classmates, is not of value, if only because one of them is closely connected with the prime-mover against defendant in the disputes which have recently occurred over the management of the college, and the other is plaintiff's relative. The other persons, referred to in the plaint as having been present, were not named or called. Third witness for plaintiff is the master who was taking the class at the time. He says that the noise, consisting in clapping, was not exceptional. But he left the room, apparently while it was in progress, and was, he admits at once, reprimanded by defendant for allowing it; he was on probation and his service was terminated by defendant; in the circumstances no weight can be given to his statements. The evidence standing thus, the conclusion must be that defendant's case is substantially correct and that there was a breach of discipline, which deserved and which it was his duty to repress by punishment. If any answer is needed to the contention, which found favour with the lower Court, that plaintiff should not have been made to suffer for a disturbance to which he is not proved to have actually contributed, there is the fact, spoken to by defendant alone, but which there is no good reason for doubting, that he was shaking the desk and was therefore joining in the rowdy demonstration which was going on.

There is, so far as we have been shown, no Indian authority as to the amount or nature of physical force

which a schoolmaster in inflicting punishment is entitled to use. But there is, subject to one reservation to be referred to later, no dispute that the general rule laid down by the English Courts in *Regina* v. *Hopley*(1), *Fitzgerald* v. *Northcote*(2), and other more recent cases, including *Hutt* v. *Haileybury College Governors*(3), must be applied, that the master as the delegate of the parent may for the purpose of correction inflict moderate and reasonable corporal punishment. Care may no doubt be necessary in the application of this general principle in this country, in which this delegated authority must be exercised by persons so dissimilar in status as a pial schoolmaster and the defendant; and Courts will no doubt not fail to insist on a close scrutiny of the severity of the chastisement inflicted and its justification. But in the present case there is no difficulty. For the "two smacks," which alone have been established, were probably the *minimum* which a boy like plaintiff, aged fourteen, would have felt. They caused no injury requiring medical attention or even which made plaintiff cry out or disabled him from going home at once. The references by his father, fifth witness for plaintiff, to his illness for three days after the occurrence and his subsequent attack of fever and smallpox are grotesque. The real reason why importance was attached to what happened is no doubt that given by ninth witness for plaintiff, that "it was a case of a Brahman being beaten by a Thiyya and it would have been different, if the man who beat was a Brahman."

It is impossible to find with reference to general principle, and we understand that, if general principle alone had been in question, the lower Court would not have found that defendant exceeded his powers.

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(1) (1860) 2 F. & F., 202. (2) (1865) 4 F. & F., 656.
(3) (1888) 4 T. L.R., 623.

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Reliance however has been placed by plaintiff, and the lower Court has based its decision mainly, on rule 59-A of the Madras Educational Rules, 1918, or the similar rule in the rules of 1901, which was actually in force at the date in question. These rules embody notifications approved by Government and are, it is not disputed, binding on institutions, such as the Palghat College, which receive Government aid. Rule 59-A provides that corporal punishment shall not be inflicted except in a case of moral delinquency or flagrant insubordination and shall be limited to six cuts on the hand, to be administered only in accordance with a specified procedure, with the details of which we are not concerned. This rule resembles closely the regulation considered in *Mansell* v. *Griffin*(1), although the question there was not only of the character of the punishment authorized, but also and principally of the right of an assistant mistress to inflict it instead of the headmaster in the regulation. On that point in the words of PHILLIMORE, J.,

"if the regulations were known to the parents, this would no doubt give rise to a strong argument to show that the parent had only delegated to the underteacher that authority which the rules of the school give."

A similar argument was in fact relied on in this case at the trial, but not here; and it was rejected by the lower Court for the sufficient reason that the rule was never pleaded, that plaintiff's guardian was not proved to have known of or acted on it, and that as it could at any time have been altered or cancelled by Government, it cannot create between parent or student and the master any direct obligation. The rule was however also relied on by the lower Court and is relied on here as evidence of the kind and quantity of corporal punishment, which is sanctioned in such a school by custom and professional

(1) [1908] 1 K.B., 160.

opinion and which therefore the Court should regard as reasonable.

It may at once be observed that acceptance of this argument will be of no material assistance to plaintiff. For if his complaint is only that he received "two smacks" on his cheek instead of the minimum permitted by the rule, a cut with a cane on his hand, there can, with all respect for the opinion of his learned vakil to the contrary, be no difficulty in comparing the relative severity of these punishments; and his sole grievance consisting in the informality of the procedure employed, although the pain inflicted was less, an award of only nominal damages will be entailed. But in fact rule 59-A is not applicable at all, as either prohibiting or regulating the petty corrections, such as that now in question, without which the ordinary discipline of a school cannot be maintained and which must be given immediately, if they are to be effective, this appearing from the references in it to moral delinquency and flagrant insubordination and the specific instances given of the former. In *Mansell* v. *Griffin*(1), although (as already stated) the question was primarily of the person who had authority to punish, the similar regulation then in question was read as not exhaustive of the occasions on which corporal punishment could be employed or the methods of its employment, other methods consisting in interference with the liberty of the subject being specified as legitimate in less serious cases, and the principle applicable to infliction of blows being referred to as the same. There the findings with reference to the regulation were, as they would have to be here if only the rules were in question, that the method of chastisement was improper, although the chastisement actually inflicted was moderate and not so hurtful as that authorized,

(1) [1908] 1 K.B., 160.

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and that the defendant exceeded her authority Yet it was held that those findings were not inconsistent with a refusal of damages and that notwithstanding the Regulation it was enough for the teacher to be able to say: "The punishment I inflicted was moderate and it was such as is usual in the school and such as the parent might expect that the child would receive if it did wrong."

That, and not anything included in the rule, being the test to be applied to the master's action, it is sufficient for the present purpose, that, although actual instances of these petty chastisements must from the nature of the case be few and evidence regarding them difficult to obtain, since neither students nor masters will be willing to admit that recourse to them was ever necessary, there is clear evidence that such recourse has on occasion taken place at Palghat and is not regarded as improper by persons in plaintiff's social position. Thus it is important that eighth and ninth witnesses for plaintiff, his castemen, admitted having been beaten for petty faults by their teachers without suffering in reputation, the latter, as already stated, distinguishing plaintiff's case with reference to the caste of defendant; and defendant speaks to having given blows on boys' cheeks himself on other occasions and he and C.W. I to a former Principal of the college having done so. There is accordingly enough to show what common knowledge would support, that the punishment plaintiff complains of was such as a parent might expect his child to receive. The conclusion must be that defendant was entitled to inflict it and is not liable because he did so.

It is only necessary to add that in any event it would have been impossible to sustain the Lower Court's use of its discretion to award to plaintiff half the costs of the suit. For, whilst it recognized that his allegations of fact

were greatly exaggerated and that a decree could be given for only Rs. 150 out of Rs. 5,250 claimed, it lost sight of the fact that the claim at the latter figure was inflated to an extent which, neither the desire to obtain a right of appeal on the facts to this Court nor the caste prejudice already referred to, could excuse. The reason given for imposing liability for half the costs on defendant, that he failed in one line of defence on issue IV, although be succeeded on another, is unconvincing; and we cannot subscribe generally or without reference to the conduct of the parties to the principle which the Lower Court professes to have followed that an award of costs on the amount disallowed should not be given, if the result is "to sweep away" the whole damages decreed.

The Appeal is allowed; the suit being dismissed with costs throughout; the Memorandum of Objections is dismissed with costs.

VENKATASUBBA RAO, J.—This Appeal raises three questions:

(1) What is the extent of the right possessed by a schoolmaster to inflict punishment on his pupil?

(2) Is the punishment actually inflicted by the defendant upon the plaintiff justified?

(3) If the punishment is not justified or has been exercised unreasonably, to what damages is the plaintiff entitled?

According to the law of England the authority of the schoolmaster is, while it exists, the same as that of the parent. It is stated that the parental authority is delegated to the schoolmaster and that the schoolmaster represents the parent for purposes of correction. This proposition is borne out by ample authority [see *Regina* v. *Hopley*(1) and *Fitzgerald* v. *Northcote*(2), Halsbury's

(1) (1860) 2 F. & F., 202. (2) (1865) 4 F. & F., 665.

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Laws of England, Volume 27, page 876, Volume 12, page 124 and Volume 17, page 107].

The power of the English father over his children was never so wide as that of the Roman father. Under the ancient Roman laws the father had the power of life and death over his children. But this doctrine of paternal authority was gradually relaxed, though it was never under the Roman Law, wholly abandoned. The Common Law however gives the parent only a moderate degree of authority over his child's person and the parental chastisement must be moderate and must be exercised in a reasonable manner, and if the parent exceeds the bounds of moderation and inflicts cruel and merciless punishment he is liable to be punished [see Schouler's Domestic Relations, 5th Edition, section 244, and Eversley on the Law of Domestic Relations, 3rd Edition, pages 509 and 510].

It follows therefore that for purposes of correction the schoolmaster may inflict a moderate and reasonable corporal punishment. COCKBURN, C.J., says in *Regina* v. *Hopley*(1), above referred to :

> "If it be administered for the gratification of passion or of rage, or if it be immoderate and excessive in its nature or degree or if it be protracted beyond the child's powers of endurance or with an instrument unfitted for the purpose and calculated to produce danger to life or limb, in all such cases the punishment is excessive, the violence is unlawful."

With reference to these principles I shall proceed to examine whether in this case the defendant exceeded the bounds of moderation in inflicting punishment upon the plaintiff. The Subordinate Judge has found that the plaintiff's version of the injury inflicted upon him is grossly exaggerated and that the defendant gave the plaintiff two smacks on his cheek. The defendant's justification is founded upon a breach of the discipline of

(1) (1860) 2 F. & F., 202.

the school and I am prepared to accept the defendant's account of the incident. According to him on the day in question he heard a loud noise coming from the long hall of the school and on turning to go over to the long hall he found the teacher of the Fourth Form A coming towards him. The defendant asked him whether that noise came from his class and rebuked the teacher for having come away without checking the boys. Then he went over to the Fourth Form A class, asked the boys who had gone out into the verandah to go back into their class, and the defendant told them that what they did was rowdyism and that they ought not to repeat it. Then he found that there was a light clapping of hands in Form V-B. He did not mind it. He objected to rowdyism but not to merry making. Immediately after there was a tremendous sound from IV-B due to clapping of hands, "drumming on the desk," hooting, whistling, shrieking. He paused for about a minute and then went over to the room of IV-B. Plaintiff and two other boys were seen shaking a reversible desk. But the other two boys ran away and the plaintiff looking at him continued the shaking of the desk. This is in effect the evidence of the defendant; and he deposes that the plaintiff behaved like a rowdy by shaking the desk and that the defendant apprehended damage to the desk, which by the way was already in a damaged condition. The headmaster was examined as a Court witness; and he states that about an hour after this incident the defendant told him that in IV-B class there was a good deal of rowdyism characterized by shrieking, hooting, whistling and shaking of the desk, and that the plaintiff was seen by the defendant in the act of shaking the desk and raising it up and down and thus creating a great deal of noise, and that the defendant thereupon gave him two smacks on the cheek.

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Though the plaintiff did not admit that he shook the desk and stated that he merely clapped his hands, the seventh witness examined on the plaintiff's side, a class-mate of the plaintiff, admitted that the boys clapped their hands and drummed on the desk, "and that the plaintiff also along with the rest of the class did both these acts"; and the sixth witness for the plaintiff, another classmate of his, also admitted that on that date there was extra noise. The version of the defendant is also borne out by the probabilities of the case. He says that on the 14th March 1918, i.e., the day previous to the occurrence in question; he asked the headmaster to check the beginnings of the disorder of the kind mentioned above, that the headmaster in obedience to his order went on the 14th to the classes concerned and spoke to the boys, and that on the 15th, after the incident, he issued a circular which is filed and marked as Exhibit B in the case. The circular states that the defendant had been noticing during the two days, the 14th and the 15th, "the most perfect rowdyism prevailing in class rooms at the end of certain lessons. . . clapping of hands, whistling, shrieking, etc., which no master who has any idea of discipline would tolerate."

In these circumstances was the defendant justified in giving two smacks on the cheek of the plaintiff? I have carefully examined the evidence and I find that it is nowhere stated that the plaintiff suffered undue pain or any injury on account of this beating. No doubt the plaintiff stated that in addition to the smacking on the cheek, the defendant assaulted him brutally and that as a result of the merciless and cruel assault the plaintiff suffered bodily pain. When the defendant filed his written statement the plaintiff knew that the defendant admitted that he had given only two smacks on the cheek, but that he had denied the rest of the assault.

It is significant that no attempt was made to elicit from the plaintiff the extent of the suffering he underwent on account of the punishment which the defendant admitted he had inflicted upon the plaintiff. It is also noticeable that the defendant himself was not cross-examined as regards the nature of the smacking with a view to establish that it was excessive or violent. The defendant says that he considered it a quite trifling matter and that in the circumstances he felt he was justified in inflicting these two smacks. I find it therefore difficult to hold that the defendant exceeded the bounds of moderation or that the punishment inflicted by him was unreasonable.

Mr. Krishnaswami Ayyar who appeared for the plaintiff stated that he would not contend that rule 59-A of the Madras Educational Rules is binding upon the defendant. Rule 59-A runs as follows:

> "Corporal punishment shall not be inflicted in schools except in a case of moral delinquency such as deliberate lying, obscenity of word or act, or flagrant insubordination, and then it shall be limited to six cuts on hand and be administered only by or under the supervision of the headmaster. The headmaster shall record in a register every case in which corporal punishment has been inflicted specifying the name, class and age of the pupil, the date, nature of the offence and the amount of punishment."

The learned vakil admitted that the relations of the plaintiff and the defendant would be governed by the rules of the Common Law, and that the defendant as Principal had power to inflict corporal punishment, and that the only question was whether the punishment inflicted was reasonable and moderate. It is therefore not necessary to discuss the binding nature of the Madras Educational Rules or the reasonableness of the punishment with reference to the said rules. He however argued that the rule 59-A is indicative of what is reasonable punishment. I am clearly of the opinion that

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this contention is untenable. As a matter of fact the rules are silent as regards the punishment to be inflicted in cases of offences other than the offences dealt with under the rule. Does it follow then that in cases not covered by this rule corporal punishment cannot be inflicted at all? or if it can be, the master is always bound to strike the pupil on the hand? If this argument is sound, the schoolmaster would not be justified in inflicting any corporal punishment whatsoever, however light it may be, unless the corporal punishment consists of strokes on the hand. It may well be that in the schoolmaster's opinion the caning of the pupil on the hand is too severe a punishment for the offence of which the pupil is guilty, but if the doctrine contended for is correct, the schoolmaster will be bound never to depart from this form of punishment. Cases also may be conceived where caning a pupil by striking him on the hand would not be proper or desirable, as where the pupil may be suffering from some disease or infirmity in the hand, or for some other similar reason the pupil is unable to stand such punishment. In *Mansel* v. *Griffin*(1), PHILLIMORE, J., makes the following observations:

"It is, I suppose, false imprisonment to keep a child locked up in a class room, or even to order it to stop, under penalties, in a room for a longer period than the ordinary school time without lawful authority. Could it be said that a teacher who kept a child back during play hours to learn over and say his lesson again, or who directed a child to stand up and kept him standing perhaps for an hour, subjecting him thus to fatigue and to the derision of all his classmates, or who put upon him a dunce's cap, as was frequently done in earlier days in the case of stupid or backward children—could it be said that such a teacher would be liable in an action for trespass to the person? The cases I have instanced are not cases of the infliction of blows, but they are cases of interference with the liberty of the

(1) [1908] 1 K.B., 160.

subject, and it seems to me that the principle must be the same for all these cases."

I may observe that the schoolmaster cannot escape liability merely on the ground that chastisement administered to the pupil has not left on the pupil's body any marks of violence or injury. Cases are not uncommon in this country of punishments of extremely grotesque character being inflicted involving danger to life or limb of the pupil or resulting in a state of prostration on the part of the pupil, and the Courts will certainly discountenance resort by the schoolmaster to such barbarous and inhuman forms of correction. The question whether the punishment inflicted is moderate and reasonable is a question of fact but the Courts will consider, in the words of COCKBURN, C.J., already referred to, whether the punishment administered was immoderate and excessive in its nature or degree, and I may add that if it was immoderate and excessive either in its nature or degree the punishment ceases to be reasonable. Mr. Eversley in his "Law of Domestic Relations" says that the right of the parent of chastisement is jealously watched by the Courts and if the parent exceeds the bounds of moderation and inflicts cruel punishment upon the child he may be severely punished. I may observe that, if this is true in the case of a parent, it is much more necessary that in the case of a schoolmaster this right should be closely watched by the Courts.

In *Fitzgerald* v. *Northcote*(1), cited above, COCKBURN, C.J., while stating that on the one hand it is for the general benefit of the society and of its youth that the authority of those charged with the care of scholastic establishment should be maintained, observes :

> "on the other hand it is of equal importance that it should not be exercised arbitrarily."

(1) (1865) 4 F. & F., 656.

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I have considered the circumstances that led to the administering of the correction in this case and the evidence relating to the nature and degree of the punishment inflicted and I am of opinion that the punishment was neither immoderate nor unreasonable. The plaintiff had admitted that the Principal bore no ill-will or malice towards him but on the other hand had given the plaintiff good advice on previous occasions. To use the words of COCKBURN, C.J., again, the punishment was not administered for the gratification of passion or of rage. In these circumstances I hold that the plaintiff is not entitled to any damage and I agree with the judgment that has been delivered by my learned brother.

N.R.