

ly to this reference that the auction-purchaser at a sale  
of a mere money-decree acquires only the rights  
in his judgment-debtor at the time of sale.

1876

KHUB CHAND  
v.  
KALLAN DAS.

APPELLATE CIVIL.

1876  
June 9.

(*Mr. Justice Turner and Mr. Justice Oldfield.*)

ARIM BAKSH AND ANOTHER (PLAINTIFFS) v. BUDEHA (DEFENDANT)\*

*Public Thoroughfare—Obstruction—Jurisdiction—Act X of 1872, s. 521.*

suit for obstructing a public thoroughfare can be maintained in a Civil  
without proof of special injury.

was a suit for the removal of a portion of a "chabutra,"  
encroachment on a certain road, the plaintiffs alleging that  
the encroachment was such that carts and other wheeled convey-  
ances were unable to pass along the road.

The lower court found that the road was not a public  
thoroughfare. In consequence of this finding, it gave  
decree in favour of the defendant. On appeal, it was  
found that the road was not a public  
thoroughfare, and that, even if it were, the lower appellate Court was wrong in holding that the  
suit was not maintainable.

The lower appellate Court held, on the assumption that the road  
was a public thoroughfare, that, as the plaintiffs alleged no special  
injury, the suit was not maintainable.

On special appeal by the plaintiffs to the High Court it was  
argued that the road was not a public thoroughfare, and that, even  
if it were, the lower appellate Court was wrong in holding that the  
suit was not maintainable.

Pandit *Bishambar Nath*, Pandit *Ajudhia Nath*, and Babu  
*Oprokash Chandar*, for the appellants.

\* Special Appeal, No. 172 of 1876, from a decree of the Judge of Allahabad,  
dated the 12th February, 1876, reversing a decree of the Munsif, dated the 31st  
July, 1875.

1876

Munshi Hanuman Parshad and Lala Ram Parshad,  
spondent.

KABIR BAKSH

v.

BUDHA.

The judgment of the Court, so far as it is material to the contention, was as follows:—

If the road is a public thoroughfare, then, inasmuch as plaintiffs allege no special injury, the suit for the removal of encroachment cannot be maintained—*Baroda Prasad Mostafi Gora Chand Mostafi* (1); *Pyari Lal v. Rooke* (2); *Hira C. Banerjee v. Shama Charan Chatterjee* (3). There is, it is true, a decision to the contrary—*Jina Ranchod v. Jodha Ghella* (4), the weight of authority supports the view taken by the Judge which accords with the English law on the subject and is based on principles well understood. But it must be determined whether the road in suit is a public thoroughfare,

## APPELLATE CIVIL

*AS DEPENDANT* (DEPENDANT) v. KULSUM BIHI (PLAINTIFF)

*Act IX of 1871, s. 5, b.—Appeal—Limitation—Sufficient Cause.*

A certain suit was dismissed on the 26th July, 1875, on which day the plaintiff applied for a copy of the Court's decree. She obtained the copy on the 31st July and on the 31st August, or one day beyond the period allowed by law, she presented an appeal to the appellate Court. She did not assign in her petition any cause for not presenting it within such period, but alleged verbally that she had miscalculated the period. The appellate Court recorded that it should excuse the delay, and admitted the appeal.

\* Special Appeal, No. 478 of 1876, against a decree of the Judge of Allahabad, dated the 17th July, 1876, reversing a decree of the Subordinate Judge, dated the 26th July, 1875.

(1) 3 B. L. R., A. C. 295; S. C., 12 W. R. 160, followed in *Raj Luckhee Debia v. Chunder Kant Chowdry* 14 W. R. 173; *Bhageerath Rishie v. Gokool Chunder Mandal*, 18 W. R. 58; *Bhageerath Dass v. Chundes Churn*, 22 W. R. 462; *Ramtarak Karali v. Dinanath*

*Mandal*, 7 B. L. R. 184; S. C., 24 W. R. 414; and *Parbati Charan v. Kali Nath*, 6 B. L. R. App. 73.

(2) 3 B. L. R., A. C. 305; 3 B. L. R., App. 43; S. C., 11 W. R. 434.

(3) 3 B. L. R., A. C. 351.

(4) 1 Bom. L. C. R., 1.