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opportunity of showing cause why there should not be further inquiry before an order to that effect is made, and next, that they should use them sparingly and with great caution and circumspection, especially in cases where the questions involved are mere matters of fact. As to the mode in which their discretion should be regulated under such circumstances, we think the remarks of Straight and Tyrrell, JJ., in *Queen-Empress* v. *Gayadin* (1), in reference to appeals from acquittals, may appropriately apply and should be consulted.

## APPELLATE CIVIL.

1886
*November* 12

*Before Mr. Justice Oldfield and Mr. Justice Brodhurst.*

EZID BAKHSH (DEFENDANT) *v.* HARSUKH RAI (PLAINTIFF).*

*Malicious prosecution, suit for—Application for sanction to prosecute—Cause of action.*

*Held*, that an unsuccessful application under s. 195 of the Criminal Procedure Code for sanction to prosecute for offences under the Penal Code, in which the only loss or injury entailed on the party against whom such application was directed, was the expense he incurred in employing counsel to appear in answer to such application, such appearance being due to the fact not that he had been summoned, but that he had applied though counsel for notice of the application, anticipating that it would be made, afforded no cause of action in a suit for recovery of damages on account of malicious prosecution.

THE facts of this case are stated in the judgment of the Court.

Mr. *Habib-ullah*, Pandit *Ajudhia Nath*, and Pandit *Sundar Lal*, for the appellant.

Munshi *Ram Prasad*, for the respondent.

OLDFIELD and BRODHURST, JJ.—The plaintiff-respondent has instituted this suit for damages against the defendant-appellant on account of a malicious prosecution with reference to certain proceedings he took against him in the Magistrate's and Sessions Judge's Courts.

The appellant found the respondent's cattle trespassing in his field and drove them off. The respondent's servants complained

* Second Appeal No. 1653 of 1885, from a decree of C. W. P. Watts, Esq., District Judge of Saháranpur, dated the 20th August 1885, modifying a decree of Maulvi Maksud Ali Khan, Subordinate Judge of Saháranpur, dated the 21st May, 1885.

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to the police, charging the appellant with theft of the cattle. The charge was dismissed by the Magistrate, who gave sanction to the appellant to prosecute certain persons, namely, Lal Muhammad, servant of the respondent, and the witnesses who had given evidence. On this, on the 3rd October, 1883, the appellant charged the respondent and others in the Magistrate's Court for offences under ss. 193 and 211 of the Penal Code. The charges were dismissed on the 3rd December, 1883.

In the meantime, and before disposal of the charges, the Judge, on the 1st December, cancelled the sanction to prosecute as not given in explicit terms, but intimated that the appellant might renew his application to the Magistrate for sanction. On the 10th December, 1883, the appellant again applied to the Magistrate for sanction to prosecute the respondent and others under ss. 193 and 211, notwithstanding that his charges had already been dismissed by the Magistrate on the 3rd December, 1883. The Magistrate refused sanction, and the appellant appealed to the Judge, who, on the 5th April, 1884, refused sanction in regard to charges against the respondent, but gave it in respect of Lal Muhammad.

It is in respect of these proceedings on the part of the appellant that this action has been brought by the respondent.

The Courts below have dealt with the case under two aspects —the plaintiff's right of action in respect of the criminal prosecution which closed on the 3rd December, and his right of action in respect of the appellant's subsequent proceedings, in which he applied to the Courts for sanction to prosecute the respondent. The claim has been disallowed in regard to the first, on the ground that it is barred by limitation, and we are not concerned with this part of the case in appeal.

But the lower appellate Court has passed a decree in the respondent's favour in regard to the second part, and decreed damages for Rs. 350, modifying in this respect the decree of the first Court.

The defendant has appealed. We have to consider whether the proceedings taken by the appellant in applying to the Criminal Court for sanction to prosecute the respondent, and in which sanction was not allowed, afford a sufficient cause of action for this suit.

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In our opinion they do not. They clearly do not amount to a criminal prosecution of the respondent; but they are proceedings preliminary to it, which are necessitated under the provisions of the Criminal Procedure Code, but which need not, and did not, result in a prosecution. There has been no loss and injury, and no loss was entailed on the respondent by the act of the appellant in applying for leave to prosecute the respondent. The only loss which the respondent can show he suffered was in the expense he was put to in employing counsel to appear in the Court in answer to the applications. *But this did not necessarily result from the appellant's* applications. The appellant did not cause him to be summoned, and any appearance he put in was due to the fact that he had through his counsel asked that he should have notice of any such application, anticipating that it might be made. We are of opinion that under these circumstances the plaintiff-respondent cannot recover damages.

We set aside the decrees of the lower Courts and dismiss the suit with all costs.

*Appeal allowed.*

## FULL BENCH.

1886
*November* 15.

*Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Oldfield, Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

GHANSHAM SINGH (APPLICANT) *v.* LAL SINGH (OPPOSITE PARTY).*

*Review of judgment—Omission to serve notice of hearing of appeal upon applicant—Civil Procedure Code, s. 623—"Any other sufficient reason"—Practice—Notice to show cause—Right to begin.*

An appeal which was referred to the Full Bench for disposal was heard and determined by the Full Bench and judgment given in favour of the appellant in the absence of the respondent. Subsequently the respondent applied for a review of judgment and proved that his absence at the hearing before the Full Bench was due to a mistake which had been made in not serving him with notice of the reference.

*Held* by the Full Bench that, under the circumstances, the applicant's absence at the hearing came within the words "any other sufficient reason" in s. 623 of the Civil Procedure Code, and the review should be granted and the appeal re-heard.

* Application No. 68 of 1886 for review of judgment in S. A. No. 1468 of 1884.