

and *Kaminee Debia v. Issur Chunder Roy Chowdhry* (1), overruled the plea of limitation. This decision was reversed on appeal by the District Judge, on the ground that the order of the 25th January 1880 amounted to an order disallowing the claim under section 281 of the Code of Civil Procedure. The plaintiff appealed to the High Court.

1885

CHANDRA
BHUSAN
GANGOPA-
DHYA
P.
RAM KANTH
BANERJI.

Baboo *Doorga Dass Dutt*, for the appellant.

Baboo *Bipro Dass Mukherji*, and Baboo *Josodanundun Poramanick*, for the respondents.

The judgment of the Court (FIELD and O'KINEALY, JJ.) was delivered by

FIELD, J.—We think the Judge in the Court below is wrong in this case. We have heard the order, dated 25th January 1879, and we think it cannot be treated as an order under s. 281 of the Code of Civil Procedure. The order contemplated by that section is an order made after the investigation mentioned in s. 278. Section 280 commences “if upon the said investigation the Court is satisfied, &c.” Section 281 begins, “if the Court is satisfied, &c.” “Satisfied” clearly means satisfied upon the investigation. There was no investigation in this case, the Munsiff having declined to make any investigation, remarking that the parties would not be prejudiced.

We think, therefore, that the one year's rule of limitation does not apply to the present case. We set aside the decree of the Court below, and remand the case for trial on the merits.

Costs will follow the result.

Appeal allowed and case remanded.

Before Mr. Justice Field and Mr. Justice O'Kinealy.

IBIN HOSEIN (PLAINTIFF) v. HAIDAR AND ANOTHER (TWO OF THE DEFENDANTS.)*

1885
July 2.

Course of action—Slander—Defamation—Verbal abuse—Special damage.

A suit to recover damages for verbal abuse of a gross character may be maintained with proof of consequential damage.

* Appeal from Appellate Decree No. 1333 of 1884, against the decree of A. C. Brett, Esq., Judge of Mozufferpore, dated 28th of May 1884, reversing the decree of Moulvi Mahomed Nurul Hosain, Munsiff of T'ajpore, dated the 12th of March 1883.

1885

IBIN HOSEIN
v.
HAIDAR.

IN this case the judgment appealed from is as follows:—

“The plaintiff says that when he was in a temple engaged in contemplation after prayer, the defendants came up to him and abused him in the common native fashion calling *bhanchut, sala, haramzada*; that he feared that something dreadful (*wakna sungin*) might happen and therefore kept silent; that he is a person of much respectability, whilst the defendants are drunken tailors; that their conduct has caused him loss of honour (*izzat*) in the eyes of his acquaintance; that he would estimate the damage to his reputation at Rs. 1,000, but as the defendants are not in affluent circumstances he is content to ask for Rs. 200. The learned Munsiff has given a decree against the defendant for Rs. 30 with costs.

“I consider that the Munsiff is wrong in law and wrong in his facts. From the evidence it is clear that a quarrel arose because the parties abused each other’s religious tenets. Then there was mutual abuse. As to the law I hold that no suit for damages will lie for simple abuse without consequential injury. There is absolutely no proof that plaintiff’s friends have thought one iota less of him because defendant called him a bastard. If suits of this sort were allowed the Courts would be flooded with cases. I reverse the decision of the lower Court and dismiss the suit with costs.”

The plaintiff appealed to the High Court.

Baboo *Mohesh Chunder Chowdhry*, and Baboo *Saligram Singh*, for the appellant.

The judgment of the High Court (FIELD and O’KINEALY, JJ.) was delivered by

FIELD, J.—We do not agree with the Judge below that this suit is not maintainable. It is a suit to recover damages for abusive language of a very vile character, alleged to have been used by the defendant to the plaintiff. We do not propose to lay down as a general rule that the use of every kind of abusive language is actionable. But we think that language, which, having regard to the definition of “*defamation*” in the Indian Penal Code, is calculated to injure the reputation,—language, which, having regard to the respectability and position of the person abused.

is calculated to outrage his feelings, lower the estimation in which he is held by persons of his own class, and so bring him into disrepute, is actionable. We think there is no doubt that the language alleged to have been used in this case comes within this principle. In so deciding we follow several rulings of this Court, namely, *Moulvie Gholam Hossin v. Hur Govind Das* (1); *Shaikh Tukee v. Shaikh Khoshdel Biswas* (2); *Kali Kumar Mitter v. Ramgati Bhattacharjee* (3); *Gour Chunder Putteelundee v. Clay* (4); and *Srikant Roy v. Satcori Shaha* (5); in the note to which last other cases decided by other High Courts are quoted. We, therefore, set aside the judgment of the lower Court dismissing the plaintiff's suit and remand the case for trial upon the merits. The question of damages of course will have to be dealt with by the Judge below on the evidence.

The appeal is decreed with costs, which will be costs in the cause.

Appeal allowed.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

BROJO LAL SINGH (PLAINTIFF) *v.* GOUR CHARAN SEN AND OTHERS
(DEFENDANTS).^{*}

1885
August 19.

Limitation Act (XV of 1877), Sch. II, Arts. 132 and 147—Mortgagor and Mortgagees—Suit to follow mortgaged property.

A mortgaged his property to *B* in 1867, by a simple mortgage. In 1868 *A* sold the property to *C*. In 1870 *B* brought a suit on his mortgage against *A* only and obtained a mortgage decree. In 1883 *A* brought a suit against *C* to enforce his lien against the mortgaged property. *C* pleaded that the suit was barred by limitation, under cl. 132 of the Limitation Act, Act XV of 1877.

Held, that the suit was governed by Art. 147, Sch. II of Act XV of 1877, and therefore was not barred by limitation.

On the 24th July 1867, Brojo Nath Gupta mortgaged mouzah Dowlutpur to Kristo Churn Das, to secure the repayment, on the

^{*} Appeal from Appellate Decree No. 1543 of 1884, against the decree of J. Kelleher, Esq., Judge of Sylhet, dated the 15th of July 1884, modifying the decree of Baboo Ram Coomar Pal, Rai Bahadur, Subordinate Judge of that District, dated the 27th of February 1884.

(1) 1 W. R., 19.

(3) 6 B. L. R., App., 99.

(2) 6 W. R., 151.

(4) 8 W. R., 256.

(5) 3 C. L. R., 181.