

Before Sir Barnes Peacock, Kt, Chief Justice, and Mr. Justice Mitter.

BARODA PRASAD MOSTAFI (DEFENDANT) v. GORA CHAND
MOSTAFI (PLAINTIFF) AND OTHERS (DEFENDANTS)*

1839
July 13:

Jurisdiction—Act XLV. of 1860, s. 308—Public Road.

A suit will not lie for obstructing a public road without shewing any particular inconvenience to the plaintiff in consequence of such obstruction. A donor does not by dedicating a thing to the public necessarily become a guardian of the public *quoad* that thing.

SEE ALSO
11 B. L. R. 12
7 B. L. R. 184

Baboo *Bangshi Dhar Sen* for appellant,

Baboo *Ashutash Chatterjee* for respondent.

The judgment of the Court was delivered by

PEACOCK, C. J.—We think it clear that this suit will not lie. The plaintiff sues for obstructing a public road, without showing that he has sustained any particular inconvenience in consequence of that obstruction. If he can maintain this suit, any member of the public can do so, and the defendant may be ruined by innumerable actions by persons who have not sustained a farthing of damages. It is said that the plaintiff has a right to sue because he was one of the persons who dedicate the road to the public: but it is not because he gave the road to the public that he is necessarily entitled to be the guardian of the public, and to sue whenever there is any obstruction to the public, which causes him no inconvenience beyond that which is sustained by every other member of the public.

Section 308 and the following sections of the Code of Criminal Procedure have provided for the removal of obstructions to thoroughfares. Section 310 says, that a person on whom an order is issued shall be bound to obey the same, or he may apply to the Magistrate by petition for an order for a jury to be appointed to try whether the order is reasonable and proper. But there is no such thing as a jury in a civil case in this coun-

* Special Appeal, No. 654 of 1869, from a decree of the Subordinate Judge of Jessore, dated the 21st December 1868, reversing a decree of the Meconsil of that district, dated the 23th March 1868.

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try, and if the jurisdiction were to be taken away from the Magistrate and given to the Civil Court, the parties would be deprived of a right which the law has intended to give them of having a jury appointed to decide whether an order in such a case is reasonable or not. In this particular case, the jury have actually found that no injury to the public has resulted.

It is unnecessary to decide whether this action has been brought from malicious motives ; but the first Court found that it was brought merely to annoy the defendant who had erected a new house on the spot.

The decision of the lower Appellate Court is reversed, and the decision of the first Court affirmed with costs in the lower Appellate Court and the costs of this appeal.

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

1869
 July 14

CHAND KHAN (PLAINTIFF) v. NAIMAT KHAN (DEFENDANT)*

Mahomedan Law—Right to Pre-emption.

Under the Mahomedan law, the owner of the land through which the land in respect of which a right of pre-emption is claimed receives irrigation, has a preferential right to purchase rather than a mere neighbour.

Baboo *Lakhi Charan Bose* for appellant.

Baboo *Girija Sankar Mazumdar* for respondent.

THE facts sufficiently appear in the judgment of

JACKSON, J.—The plaintiff in this case claimed to purchase certain lands, which the defendants had mutually sold and bought under *huq-shafa*. He claimed it in two ways, both by the right of *khulit*, and also by the right of vicinage. The defendant denied the right called *khulit*; and as to vicinage, he alleged, that he himself was the next neighbour, and therefore had, at least, an equal right of pre-emption; and he also denied the performance of the *tulub-i-muwasabat* and the *tulub-ishad*.

* Special Appeal, No. 103 of 1869, from a decree of the Subordinate Judge of Hooghly, dated the 21st October 1868, reversing a decree of the Moonsiff of that district, dated the 23rd June 1868.