

Before Mr. Justice Bayley and Mr. Justice Paul.

KAPTAN v. G. M. SMITH.*

Assault—Causing Hurt—Autrefois Acquit—Penal Code (Act XIV of 1860), s. 352—Criminal Procedure Code (Act XXV of 1871), s. 55.

1871
June 7.

A person who is tried and discharged for the offence of assault under section 352, Penal Code, cannot again, upon the same complaint, be tried for "causing hurt."

A coolie named Kaptan charged one Mr. Menzies Smith with having severely flogged him with a cane. The Deputy Commissioner of Larkimpore who tried the case, considered the facts alleged in the complaint to amount to an assault but the complainant failing to establish a *prima facie* case of assault he discharged the accused. The Commissioner was of opinion that there was a failure of justice in this case, and directed the Deputy Commissioner to put Mr. Smith on his trial, upon the same complaint, for causing hurt. The Deputy Commissioner was of opinion that section 55 of the Criminal Procedure Code barred the second trial. The matter was then brought to the notice of the Judicial Commissioner, who was a Sessions Judge. The Judicial Commissioner, agreeing with the view taken by the Commissioner, sent up the proceedings, to the High Court.

The opinion of the High Court was delivered by.

BAYLEY, J.—Mr. Menzies Smith having been discharged on his trial for the offence of assault or use of criminal force under section 352 of the Penal Code, which includes the offence of battery (See Morgan and Macpherson's Penal Code, page 308), cannot now be tried for "causing hurt." The criminal matter in respect of which Mr. Menzies Smith was tried was the flogging and beating of a coolie with a cane; of this he was acquitted. It is now intended to put Mr. Menzies Smith on his trial for the same criminal matter upon a charge of "causing hurt." It is quite clear that, under whatever denomination the offence is classed, it is the *one* offence of beating and flogging. A second trial for the same offence cannot be allowed to take place, regard being had to the provisions of section 55 of the Code of Criminal Procedure.

In the case of *The Queen v. Dwarika Nath Dutt* (1), Sir Barnes Peacock, in his judgment, discusses fully the plea of *autre fois acquit*, and his Lordship makes the following observation: "When it is said that the offences must be the same, it is merely meant that they must be in reality the same." It appears to us that the actual offence of which Mr. Smith was acquitted is the same as that for which he has been again indicted, under the term "hurt." Under these circumstances the plea of *autre fois acquit* stands good, and the second trial should not take place.

* Reference under section 434 of the Code of Criminal Procedure by the Officiating Judicial Commissioner of Assam.

Before Mr. Justice Kemp and Mr. Justice Glover.

MAHARAJA DHIRAJ MAHTAB CHAND BAHADUR (PLAINTIFF) v.
SRI MATI DEBKUMARI DEBI (AND OTHERS (DEFENDANTS)).*

1871
May 2.

Interest.—Act VIII of 1869 (B. C.), s. 21—Rate of Interest.

Under Act VIII of 1869 (B. C.), section 21, it is discretionary with the Judge to give interest at 12 per cent.; he is not obliged to award interest to that extent.

Baboo *Ashúth Mookerjee* for the appellant.

Baboo *Upendra Chandra Bose* for the respondents.

The judgment of the Court was delivered by

KEMP, J.—The only point raised in this case, in special appeal, is with reference to the question of whether the Judge was right in awarding interest at the rate 4 per cent. In special appeal, it is contended that, under section 21, Act VIII of 1869 (B. C.), the plaintiff is entitled to recover interest of the rate of 12 per cent. per annum. We think that there is no force whatever in this contention. Section 21 lays down that arrears of rent, unless otherwise provided for by a written agreement shall be liable to interest at 12 per cent. per annum. There is no written agreement in this case, and therefore, if the Judge thought right to award any interest, he was entitled in his discretion to award it to the extent of 12 per cent. per annum. See *Nobolath Dey v. Rajah Boradakarth Roy Bahadur* (1), *Kashee Nath Roy Chowdhry v. Mynuddeen Chowdhry* (2), and *Beckwith v. Kishto Jeebun Buckshee* (3).

The special appeal is dismissed with costs.

Before Mr. Justice E. Jackson and Mr. Justice Mookerjee.

MUSSAMAT YUSAN KHATUN (PLAINTIFF) v. RAMNATH SEN (DEFENDANT)†

1871
March 28.

Act VIII of 1859, s. 230—Application—Regular Suit.

An application, under section 230 of Act VIII of 1859, should be registered and numbered in the register of suits as a plaint in a regular suit, and the Court is bound to determine, upon regular issues as in an ordinary suit, both the right and title, as well as the possession of the applicant.

Baboo *Debenra Narayan Bose* for the appellant.

Baboo *Malit Chandra Sen* for the respondent.

*Special Appeal, Nos. 2721 and 2719 of 1870, from a decree of the Judge of Hooghly, dated the 11th November 1870, affirming a decree of the Subordinate Judge of that district, dated the 30th August 1870.

†Special Appeal, No. 2220 of 1870, from a decree of the Subordinate Judge of Dacca, dated the 4th August 1870, affirming a decree of the Moonsiff of that district, dated the 13th December 1869.