of. Therefore, it was not a case of which the Small Cause Court could take cognizance, and not such a case, therefore, on which no appeal lies to this Court.

This is a suit for damages for a slander upon the plaintiff.

It is urged that the Judge, who merely finds that there was an accusation of theft against the plaintiff which was not brought home to him, is not sufficient to hold the defendant amenable for damages.

A mere accusation is certainly not sufficient; but the Judge has recorded reasons for holding that the accusation was false, and a false accusation implies malice, which is certainly a ground for damages.

It is next urged that full costs have been awarded; but as it was discretionary with the Judge to award what costs he thought proper, and we think full costs was a very proper order, we reject this plea also.

The special appeal is accordingly dismissed with costs.

The 28th August 1865.

Present:

The Hon'ble C. Steer and Shumbhoonath Pundit, *Puisne Judges.*

Fraudulent Sales—Mesne-profits—Right of suit.

Case No. 1304 of 1865.

Special Appeal from a decision passed by the Judge of Purneah, dated the 9th February 1865, modifying a decision passed by the Sudder Ameen of that District, dated the 7th September 1864.

Monohur Doss (one of the Defendants), *Appellant,*

versus

Shaikh Lutafut Hossein (Plaintiff) and others (Defendants), *Respondents.*

Moulvie Aftahooddeen Mahomed for Appellant.

Mr. J. Baptist for Respondents.

A. sued *B.*, *C.*, and *D.* to declare as fraudulent the sale of an estate by *B.* his debtor to *C.*, and the sale of half the same by *C.* to *D.* Both sales were found to be fraudulent, and *A.* was declared entitled to sell only 2 annas of the property, which was the extent of *B.*'s share in it. *E.*, claiming under subsequent assignment from *B.*, now sues *D.* for mesne-profits of B.'s share during the time that A.'s case was pending, in which *D.* had pleaded his possession of an 8-anna share. HELD that *E.* has no right of suit against *D.*, and that the decree in A.'s suit gave no rights to *B.*, such as could be assigned to *E.*, for the purposes of this suit.

In the trial of this suit neither the Sudder Ameen nor the Judge appears to have had the least idea of the matter they had to deal with.

The suit is a regular suit brought by one Lutafut Hossein against Monohur Doss for wasilat during the time that a certain former suit was pending trial. Lutafut Hossein was no party to that suit, but he bought the right of Gohuroonissa to sue for the wasilat.

It appears from the decision in the former suit that one Chumun Lal had got some decree against Gohuroonissa. He tried to execute it, but was opposed. He then instituted another suit against Chand Monee and others to declare Gohuroonissa's deed of sale in her (Chand Monee's) husband's favor of a 16 annas of the property described in that deed as false and fraudulent. He also alleged that the sale by Chand Monee of 8 annas of that 16 annas in favor of Monohur was also false and fraudulent. It was declared in the judgment in that suit that both these deeds were false and fraudulent; but, as by the investigation it appeared that Gohuroonissa owned only 2 annas of the property alluded to in those deeds, the other 14 being owned by Daud Ali, Chumun Lal was declared only entitled to sell in execution of his claim against Gohuroonissa those 2 annas.

What title does this decree in favor of Chumun Lal give to Gohuroonissa to use Monohur for the mesne-profits of the 2-anna share of the property which was found to belong to Gohuroonissa, it is hard to say. If she has no title, the plaintiff, a purchaser from her, can have no title either.

Now, it has been seen that Gohuroonissa set up Chand Monee to represent that she had purchased her property with a view to defraud Chumun Lal: Monohur is said to have bought half the property from Chand Monee. Now, in whatever light we look upon Monohur, no suit will lie against him by Gohuroonissa. If he was a party to the fraud of Gohuroonissa in the sale by her to Chand Monee, he cannot be sued by Gohuroonissa, both being parties to the same fraud. If Monohur was an innocent purchaser from Chand Monee, knowing nothing of her fraud, he is not amenable to Gohuroonissa for mesne-profits; for he was in possession under a title which Gohuroonissa herself had helped him to consider as good and valid.

But, even if an action would lie against Monohur, on the ground that he was, during

the pendency of the former suit, in possession of 8 annas of the property out of the 16 alleged to have been sold to Chand Monee, what warrant is there for saying that the 8 annas sold to him included the 2 annas belonging to Gohuroonissa? The 8 annas sold by Chand Monee might have been 8 annas out of the 14 belonging to Daud Ali.

In this view, we reverse both the judgments of the Lower Courts, and dismiss the plaintiff's suit with all costs.

The 29th August 1865.

Present:

The Hon'ble H. V. Bayley and E. Jackson, *Puisne Judges.*

Evidence—Admission of forged document—Absence of erasure or alterations.

Case No. 1408 of 1865.

Special Appeal from a decision passed by the Judge of Behar, dated the 18th February 1865, reversing a decision passed by the Moonsiff of that District, dated the 27th July 1864.

Ram Suhaye Singh (Plaintiff), *Appellant,*

versus

Oodeet Singh and others (Defendants), *Respondents.*

Baboo Bhugobutty Churn Mitter for Appellant.

Mr. C. Gregory for Respondents.

The absence of erasures or alterations is no ground for admitting what is at first sight a palpable forgery to be a true document.

THIS is a suit to recover possession of 13 dams of Mouzah Sarga, Pergunnah Gobi. The first Court decreed the claim on the merits. Certain of the defendants, who alleged to be the proprietors of 5 annas of the mouzah, appealed to the Judge, urging that they had put forward the plea of limitation in bar of the suit, but that no issue had been laid down on that point, and no decision recorded upon it. The Judge thereupon laid down the issue, and proceeded to determine it upon the evidence taken before the first Court. He ultimately dismissed the plaintiff's whole suit, holding their plea in bar to be good.

On special appeal, it is said that the Judge should, under the circumstances, have remanded the case to the first Court to allow the plaintiff to put in additional evidence to prove his possession. We think this objection would be valid, if the plaintiff could show us that he asked for time before the Judge to adduce further evidence, or if he could show that no issue bearing upon the point had been raised by the first Court, and no evidence on possession had been taken by that Court. So far from this being the case, however, we find that the plaintiff's pleaders in the Judge's Court argued the point of limitation on the evidence which had been recorded in the first Court, and did not press the Judge to admit any further evidence. In fact, also, the first Court did raise an issue on the question of possession, and evidence was adduced on that issue, although no special plea of limitation was referred to.

We would not, therefore, have remanded this case on that ground of special appeal. But we think that the next ground of special appeal requires a remand. The Judge has, in deciding the question of limitation against the plaintiff, given a special weight to a deposition of the plaintiff alleged to have been made by him in the Fouzdaree Court after the judgment of the first Court had been passed, in which deposition it is said that plaintiff admitted that he had sold the whole of the 13 dams as alleged by the defendants. It is said that the plaintiff had petitioned, stating that this deposition was a forgery, but that the Judge, without making sufficient enquiry, had held it to be a true deposition. The Judge appears to have sent for the original deposition, and he remarks that that deposition contained no erasure or alteration of any sort, and upon this he considers that it is quite certain that the plaintiff did make the deposition. We would in the first place remark on the improbability that the plaintiff, having obtained a decree for the 13 dams of Mouzah Sarga, for which he had preferred a suit in the Civil Court, should at once go to the Fouzdaree Court and depose that the statement of the defendant in that suit, to the effect that he had sold those 13 dams to them, was true. It is not enough, then, for the Judge to see that there are no erasures or alterations in the deposition alluded to; it is necessary that the Judge should enquire whether any such deposition was really made by plaintiff or not. *Primâ facie*, there is the strongest presumption that he could not have given any such deposition. It is impossible, on any reasonable view of the matter, to understand that he could have deposed to the truth of the very fact which had already been held in his favor in the Civil