

alter any right of reimbursing themselves from under-holders which they might possess. In the case of ryots, all liabilities are required by law to be consolidated and included in the pottah, and a liability beyond the stipulated rent could not be urged; but this does not seem to be so in regard to intermediate holders, and, at any rate, the general engagement to comply with the laws of the different Courts we take to be an acceptance of the criminal and other liabilities attached to the land. It would be no forced construction to include under these terms the liability to forward the dāk imposed by the old custom and law. If, then, the defendant was liable for the dāk service under the old law, we are of opinion that he is liable to pay to plaintiff the dāk charges under the new law. But, as there has been no issue on the fact, we concede to him a remand to find whether, in fact, he bore the dāk service charges under the old law. If his petition regarding the dāk is genuine, and he cannot show that he got credit from the zemindar for the amount expended by him, this case must be given against him.

The 26th August 1865.

Present :

The Hon'ble G. Campbell and F. A. Glover,
Puisne Judges.

**Mahomedan Law of Husband and Wife—
Purchase by Wife.**

Case No. 1372 of 1865.

Special Appeal from a decision passed by the Additional Principal Sudder Ameen of East Burdwan, dated the 14th February 1865, modifying a decision passed by the Sudder Ameen of that District, dated the 25th January 1864.

Shaikh Nasoo and another (Plaintiffs),
Appellants,

versus

Mahatal Bebee and others (Defendants),
Respondents.

Baboo Rajendur Misser for Appellants.

Baboo Greeja Sunkur Mojoomdar and Moulvie Syed Murhumut Hossein for Respondents.

Under the Mahomedan law of husband and wife, a wife may (except with any fraudulent intent) purchase property as her own, during her husband's life-time, with money given to her by him on account of dower.

THIS is a Mahomedan case. Plaintiffs claim as heirs against the widow certain property bought by her as her own many years before her husband's death. Her dower deed is not proved; but it is found as a fact that the husband gave her the money on account of dower, and that she herself bought the property. Under the Mahomedan law of husband and wife, there can be no doubt that, in the absence of any proof of fraudulent intent, this is quite sufficient, and, as against the heirs, there can be no fraud when these transactions took place. The appeal is dismissed with costs.

Respondent makes a cross-appeal respecting her right to retain the remaining property for a balance of dower; but, that not being proved, there is no ground, and the cross-appeal is rejected.

The 26th August 1865.

Present :

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

Jurisdiction (of Small Cause Court)—Special Appeal—Suit for damages without allegation of special pecuniary damage.

Case No. 1194 of 1865.

Special Appeal from a decision passed by the Judge of Tipperah, dated the 4th February 1865, reversing a decision passed by the Moon-siff of that District, dated the 29th November 1864.

Raj Chunder Chuckerbutty and others
(Defendants), *Appellants,*

versus

Punchanun Surmah Chowdhry (Plaintiff),
Respondent.

Baboo Kalee Kishen Sein for Appellants.

Baboo Nil Madhub Sein for Respondent.

A Small Cause Court cannot take cognizance of a suit for damages under 500 rupees, where there is no allegation in the plaint that any special damage of a pecuniary nature has resulted from the injury complained of.

A special appeal lies in such a case.

An objection was made that, the present suit being one for damages under 500 rupees, an appeal will not lie. We overrule this, as there is no allegation in the plaint that any special damage of a pecuniary nature has resulted from the injury complained

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 Aftabooddeen 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