redemption was to be effected, has one point of analogy with the present case entirely wanting. In that suit, decided by the High Court on the 8th of July 1864 (Justices Morgan and Shumbhoonath), there was no question of any other decree for a debt under which, in execution, the equity of redemption could have been brought up. All that the High Court says in the former decision regarding the equity of redemption as still subsisting may be very true; and, were the circumstances exactly the same, we now might take the same view of the matter as our learned colleagues. But, as we have said, the circumstances are not the same. Sreenath and Nistarinee in this case have two rights: Sreenath has the mortgagor's rights, and, under the execution-sale by Nistarinee, the rights of the Biswases to redeem their shares have entirely passed away. Therefore our decision need not in the least conflict with that of our colleagues; nor will anything said by them as to the obligation, either of the Pauls or of Sreenath, to return the property on receiving payment of the debt, at all apply to this case. Bistoo Chundra, we observe, was no party to the separate decree.

Then, as to the transaction itself by which Nistarinee put up and sold the equity of redemption, when the decree for 7,000 rupees passed into the hands of Nistarinee, the debtors were duly warned by notice that their property would be put up to sale in satisfaction of the same, and yet they never appeared, and never took any steps to satisfy the debt, and to retain their equity of redemption, though we observe that other shareholders, not the plaintiffs in this action, did appear at the time, and did raise vain objections.

As to fraud, of which something has been thrown out, there is certainly none on the part of Sreenath. Everything was done fairly by regular procedure, and with notice to the plaintiffs; and, if parties will not take proper steps to secure their rights or equities over valuable property, when imperilled by process of law, we can only comment on their apathy and neglect, but must refuse to help them.

It may be that Sreenath all along has been keenly alive to his own interests, and, aided by some legal knowledge, has pursued a course which is not favorable to the interests of the Biswases; but there is no proof and no attempted proof of any violation of trust or of fraudulent dealing. And, if Sreenath has kept strictly to the law, we can only enforce that law in his favor when he appeals to it, however hard the case may be thought by the plaintiffs.

In this view, finding a marked difference between this suit and the former, finding the equity of redemption to be legally extinguished as far as the plaintiffs are concerned, and the proceedings to be strictly correct in law, we must decree the appeal, and reverse the decision of the Lower Court with costs.

The 26th August 1865.

Present:

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

Act VIII. (B. C.) of 1862—Zemindary Dak—Charges—Liability of Putneedars.

Case No. 810 of 1865.

Special Appeal from a decision passed by the Judge of Rungpore, dated the 30th December 1864, reversing a decision passed by the Moonsiff of that District, dated the 5th July 1864.

Bissonath Sircar (Defendant), *Appellant,*

versus

Ranee Shurno Moyee (Plaintiff), *Respondent.*

Baboos Luleet Chunder Sein and *Issur Chunder Chuckerbutty* for Appellant.

Baboo Sreenath Doss for Respondent.

Act VIII. (B. C.) of 1862 does not relieve putneedars from their liability under the old laws of paying the zemindary dâk charges.

The question in this case is, whether the zemindar is entitled to reimburse himself from the putneedar for the dâk charges imposed upon him by Bengal Act VIII. of 1862. It appears that the putneedar, on acquiring the putnee in 1250, bound himself to pay the Government jumma of ₹4,569 rupees, and 200 rupees malikana to the zemindar. He also engaged to obey and comply with all the laws of the Criminal and Revenue and other Courts enacted or to be enacted. The Judge says that the putneedar defendant has hitherto borne the dâk charge under the old laws. No issue was made on this point, and it is not now admitted, though a petition filed by the other side seems to leave little doubt of the fact.

We think that Act VIII. of 1862 was not intended to impose a new tax, but to consolidate and regulate an old liability. Primarily, the zemindars are in all cases liable to Government; but it was not designed to

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 dâk imposed by the old custom and law. If, then, the defendant was liable for the dâk service under the old law, we are of opinion that he is liable to pay to plaintiff the dâk 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 dâk service charges under the old law. If his petition regarding the dâk 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 Moonsiff 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