

The 11th January 1866.

*Present:*

The Hon'ble W. S. Seton-Karr and A. G. Macpherson, *Judges.*

Damages (Civil Suit for)—Conviction by Magistrate.

Case No. 2328 of 1865.

*Special Appeal from a decision passed by the Principal Sudder Ameen of Hooghly, dated the 25th May 1865, affirming a decision passed by the Sudder Ameen of that District, dated the 30th November 1864.*

Bishonath Neogy (Plaintiff), *Appellant,*

*versus*

Huro Gobind Neogy and others (Defendants),

*Respondents.*

*Baboos Umbica Churn Banerjee and Door-ga Doss Dutt for Appellant.*

*Baboos Onoocool Chunder Mookerjee, Nil Madhub Sein, Banee Madhub Banerjee, and Luckhee Churn Bose for Respondents.*

The conviction in a criminal case is not conclusive in a civil suit for damages in respect of the same act.

THE ground of special appeal in this case, which is a suit to recover damages for an assault, is that a conviction of the defendants by the Magistrate for rioting under Sections 147 and 148 of the Penal Code is conclusive evidence, and proves the assault complained of. The Magistrate does convict the defendants of rioting under these Sections, and, in his judgment, finds that the plaintiff was personally assaulted by them. The Lower Appellate Court has, however, considered it not proved that any assault took place, and therefore dismissed the suit.

We cannot in special appeal interfere with the finding of the Lower Court, as the conviction in the criminal case is not conclusive in this, which is a civil suit for damages (*see the cases collected in Roscoe's Nisi Prius, 10th Edition, 171*).

The whole case is highly unsatisfactory. The Lower Court directed that each party should pay his own costs, and we make a similar order, while we dismiss this appeal.

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The 11th January 1866.

*Present:*

The Hon'ble C. B. Trevor and G. Campbell, *Judges.*

Limitation (Act XIII. of 1848)—No deduction for legal disability—Commencement of, in the case of an adopted son.

Cases Nos. 678 and 679 of 1865.

*Special Appeals from a decision passed by the Judge of Mymensing, dated the 28th November 1864, affirming a decision passed by the Principal Sudder Ameen of that District, dated the 11th July 1864.*

Huro Chunder Chowdry (Plaintiff),

*Appellant,*

*versus*

Kishen Koomar Chowdhry and others (Defendants), *Respondents.*

*Baboos Sreenath Doss and Bhuggobutty Churn Ghose for Appellant.*

*Baboos Kalee Kishen Sein and Hem Chunder Banerjee for Respondents.*

No deduction or allowance is made by law for legal disability from the period of limitation prescribed by Act XIII. of 1848.

Limitation against an adopted son will count from the time of his attaining majority.

THE plaintiff sued the defendants in two different suits for certain plots of land of which he had been dispossessed by the defendants. A portion of the plaintiff's claim the Judge remitted to the Lower Court for investigation on the merits; but as to plots Nos. 3 and 4 to 42 in suit No. 27, and plots Nos. 2 and 3 in No. 28, he declared plaintiff out of Court under the Statute of Limitations.

The Judge finds that, as to all these plots, plaintiff is on his own showing out of Court. As to plot No. 3 in No. 27, plaintiff, remarks the Judge, states that his mother Taramonee was dispossessed by a summary award in the year 1264 whilst Act XIII. of 1848 was in force; and as the order as to three years in that Act is absolute, no time being allowed for any cause whatever to be deducted in counting limitation, and as the suit was not instituted within three years from that time, plaintiff is barred by lapse of time as regards it. Again, as regards Nos. 4 to 42, remarks the Judge, plaintiff states that defendant took possession in 1254 under an

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