

"after such attachment, the Court could, "under the Penal Code, inflict no punishment on them."

It seems to us that this order is, on the face of it, wrong and bad. If the Judge, in his discretion with reference to the circumstances of the case, had refused to grant an adjournment, it might have been difficult for us to interfere on special appeal. But when the Judge has, without the slightest reference to the interest of the parties concerned and to the facts of the case, refused to grant a coercive process to enforce the attendance of witnesses, upon the irrelevant ground that, sitting as a Civil Court, he could not punish the witnesses for their non-attendance criminally, we think that we can interfere; and accordingly again remand the case, with directions that an opportunity be given to the plaintiff to produce his evidence, and that the Judge do thoroughly and carefully carry out the spirit of the former, remand order, and try the case fully. Every Court is bound in justice to render all reasonable assistance to a party to enforce the attendance of his witnesses.

The 14th June 1866.

Present:

The Hon'ble G. Loch and L. S. Jackson,
Judges.

Jurisdiction—Partition.

Case No. 3181 of 1865.

Special Appeal from a decision passed by the Principal Sudder Ameen of Chittagong, dated the 23rd August 1865, modifying a decision passed by the Moonsiff of Howalah, dated the 3rd February 1864.

Mohsun Ali and others (some of the Defendants), *Appellants,*

versus

Nuzum Ali (Plaintiff) and others (Defendants),
Respondents.

Baboo Mohinee Mohun Roy for Appellants.
Baboo Mottee Lal Mookerjee for Respondents.

A Civil Court can only determine the right to partition of an estate paying revenue to Government. The partition itself can be made by the Collector alone under Regulation XIX., 1814.

Loch, J.—In this case, the only point for a Civil Court to determine is, whether the

plaintiff has a right to a partition or not if that question was disputed. It had no authority to make the partition itself, or to direct that a partition be made by any local form in use in the district among private parties. A partition of an estate paying revenue to Government can only be made by the Collector under Regulation XIX. of 1814. The plaintiff was at liberty to apply to the Collector for that purpose. We, therefore, reverse that part of the order of the lower Court which directs the partition to be made under what is called Gola-Bhag.

The appellant will get his costs.

Jackson, J.—I agree. Looking at the certificate and the annexed description of what the plaintiff purchased, it is manifest that he acquired, not merely the specific portion of land, so many kanees, as contended by the special appellant's vakeel, but all the rights of the judgment-debtor, Makur Ali, whatever they were in the talook. If, therefore, Makur Ali had any right of partition, the plaintiff, who succeeded to him, must be also entitled to it. But the application ought to have been made to the Collector, and not to a Civil Court.

The 14th June 1866.

Present:

The Hon'ble G. Loch and L. S. Jackson,
Judges.

Limitation—Cause of Action—Non-suit.

Case No. 3145 of 1865.

Special Appeal from a decision passed by the Principal Sudder Ameen of Chittagong, dated the 27th July 1865, affirming a decision passed by the Sudder Moonsiff of that District, dated the 20th June 1864.

Haradhun Dey (one of the Defendants),
Appellant,

versus

Ram Doss Dey (Plaintiff), *Respondent.*

Baboo Gopal Lal Mitter for Appellant.
Baboo Roopnath Banerjee for Respondent.

A non-suit gives no new cause of action.

It is perfectly clear that, in this case, at least 21 years and 4 months, and possibly a much longer period, had elapsed between the accruing of the cause of action and the bringing of the present suit in December 1861.