Company, although it was proved that the person injured might have seen the train approaching, if he had chosen to look.

We have some difficulty in dealing with a case like this where numerous questions of fact are so closely mixed up with questions of law. The rule we apply is that which has been acted on in many cases in England, and is stated by Erle, C.J., in expressing the opinion of the majority of the Judges in the case of Scott *vs.* London Dock Company (34 L. J., Ex., 220), where he said : " There " must be reasonable evidence of negligence. " But, when the thing is shown to be under " the management of the defendant or his " servants, and the accident is such as, in the " ordinary course of things, does not happen " if those who have the management use " proper care, it affords reasonable evidence, " in the absence of explanation by the de- " fendant, that the accident arose from want " of care."

On the whole, we think that the Railway Company was guilty of negligence in not keeping the station properly lighted, in allowing the train to overshoot the station, and in not warning the plaintiff against alighting : and we think that the injuries sustained by the plaintiff were caused by that negligence, and that the plaintiff did not, by his own want of care, contribute to the accident.

There remains the question of damages. The evidence on this point is not so satisfactory or precise as it might have been. It is, however, undoubtedly proved that the plaintiff, at the time of the accident, was a Bill Broker, with a good business, and making a considerable income ; that the effects of the accident were such as to disable him wholly from work for four or five months ; and that, even after that time, he would not be able to attend to business so fully or profitably as before. When we consider, in addition to this, the amount of personal suffering he has gone through, and the fact (deposed to by Dr. Macnamara) that there will probably always be a stiffness of the leg which was injured, we feel assured that we are not assessing the damages too much in the plaintiff's favor when we assess them at Rupees 10,000.

We think the decree of the Court below ought to be reversed, and that a decree ought to be given for the plaintiff, with Rupees 10,000 as damages, and all costs (as in a suit for Rupees 10,000), both here and in the Lower Court.

The 4th January 1868.

Present :

The Hon'ble G. Loch and Dwarkanath Mitter, *Judges.*

Criminal proceeding not evidence—Civil Court bound to find its facts.

Case No. 1567 of 1867.

Special Appeal from a decision passed by Baboo Gobind Chunder Chowdhry, Principal Sudder Ameen of Beerbhoom, dated the 27th April 1867, modifying a decision passed by the Moonsiff of that District, dated the 19th February 1867.

Keramutoollah Chowdhry (one of the Defendants), *Appellant,*

versus

Gholam Hossein (Plaintiff), *Respondent.*

Baboo Issur Chunder Chuckerbutty for Appellant.

Baboo Gopal Lall Mitter for Respondent.

A proceeding of a Criminal Court is not admissible as evidence : a Civil Court is bound to find the facts for itself.

Mitter, J.—THE judgment of the Lower Appellate Court in this case is extremely unsatisfactory. The action was instituted by the special respondent for damages for malicious prosecution. The Court of first instance found that he had failed to prove either malice or want of probable cause by any reliable evidence. This finding has been upset by the Lower Appellate Court upon no legal ground whatsoever. The Court observes that it has been proved by the testimony of one Meajan, that there was previous enmity between the parties ; but the existence of such enmity does not necessarily raise the presumption either of malice or of want of probable cause. The Court then goes on to say : " In the absence of animus, no one can openly charge another with theft." This proposition is manifestly erroneous. The Court further observes : " When the plaintiff has been acquitted by the Fouzdaree Court, what doubt can there remain as to the plaintiff's having been maliciously charged with theft ?" In the *first* place, the proceeding of the Fouzdaree Court herein referred to is not admissible as evidence ; and in the *second*, even if it were, the Principal Sudder Ameen had to find the facts for himself, and not to

rely implicitly upon that proceeding. The rest of the judgment is irrelevant to the points before us. The judgment of the Lower Appellate Court is, therefore, reversed, and the case is remitted to it for a fresh finding upon the record.

The 4th January 1868.

Present:

The Hon'ble G. Loch and Dwarkanath Mitter, *Judges.*

Cross-appeals—Interpleading—Section 348, Code of Civil Procedure.

Case No. 1653 of 1867.

Special Appeal from a decision passed by Moulvie Itrut Hossein Khan, Principal Sudder Ameen of Gya, dated the 25th April 1867, reversing a decision passed by the Sudder Ameen of that District, dated the 27th September 1866.

Muhboob Ali and others (Defendants), *Appellants,*

versus

Zur Banoo Bibee (Plaintiff), *Respondent.*

Messrs. R. E. Twidale and *C. Gregory* for Appellants.

Baboos Chunder Madhub Ghose, Kalee Mohun Doss, and *Roopnath Banerjee* for Respondent.

A respondent, making a cross-appeal, can take objection to any part of the judgment of the first Court adverse to him to which the appellant can answer, and which affects the appellant's interests only; but the cross-appeal of a respondent does not open up any question between himself and his co-respondents, for they cannot be allowed to interplead. The law gives a respondent a right to raise objections at the hearing of the appeal; but under Section 348, Civil Procedure Code, reasonably construed, the contest is between two parties equally interested, and not with third parties.

Loch, J.—THE plaintiff sues to get possession of certain landed property left to her by her mother, according to the schedule at foot of the plaint, and alleges that she succeeded to possession, and was illegally ejected by the defendants.

To enable us properly to understand this case, it is necessary to refer to the pedigree of the family. Asadoollah died leaving five sons, of whom we need mention only two, Ruheem and Meer Oollah. Ruheem married Bibee Jer, and had by her a son called Ibrahim, and a daughter Zur Banoo, the plaintiff. Ibrahim had a son Bahadoor, who left a daughter Rahmut Bibee. It is alleged by the plaintiff that Ibrahim and Bahadoor lived in commensality with her mother, Bibee Jer, who outlived them, and succeeded to the whole estate belonging to her husband, son, and grandson; that she died in Bhadro 1270, and was succeeded in the property by the plaintiff, who retained possession till ousted, in Kartick 1271, by the defendants, who, with the exception of Rahmut Bibee, are descendants of Meer Oollah, the other son of Asadoollah mentioned above.

The defendants state that Ruheem died in April 1832; that neither Bibee Jer, nor the plaintiff held possession, and that plaintiff's suit is barred by limitation; that the property was held successively by Ibrahim and Bahadoor; and that the latter, under a deed of exchange, dated Assar 1261, gave up his rights in all the other villages which came to him from his grandfather, and received 12 annas 6 dams of Mouzah Myra in exchange from the defendant.

The suit was first dismissed on the plea of limitation, but, on appeal, it was sent back for trial on its merits, and then the Sudder Ameen gave plaintiff a decree for the 12 annas 6 dams of Mouzah Myra, holding the deed of exchange to be valid, and the transaction to be binding. It may here be remarked that plaintiff did not ask for this, but for a share in several villages, and, as far as we are shown, did not make any reference to the exchange said to have been made by Bahadoor.

The plaintiff was satisfied with this; but Rahmut Bibee, the daughter of Bahadoor, appealed, claiming Myra as the property of her father, and the Principal Sudder Ameen reversed the judgment of the first Court, and gave plaintiff a decree for a share in all the villages as claimed by her, with the exception of Mouzah Myra, to which he concluded that she had no right as the plaintiff had, by petition on 14th December 1861, stated as much.