the Court of original jurisdiction ; and so again by the provisions of Section 350 of the Act the judgment which the Appellate Court has to give is to be for confirming or reversing or modifying " *the decree* " of the first Court,and though it is true that by the provisions of Section 334 of the Act the memorandum of appeal is to contain the grounds of objection to the " decision," still it seems to us that the object of that provision of the Legislature was to enable the Appellate Court to understand by the grounds given against the decision how it was that the decree of the first Court had been injurious to the appellant. In fact, it seems almost too obvious to require notice that the object of an appeal is to correct a something done which has been injurious to the appellant,and the law points out what that instrument is which must have been the cause of the injury in order to there being any appeal, and that instrument is declared to be the " decree." If, therefore, the decree of the first Court so far from being injurious to the appellant is actually in his favor, we fail to see how the decree can be the subject of an appeal on his part simply because there may have been some expression in the judgment which led to the decree which may be considered prejudicial.

As, therefore, the decision in this instance was favorable to the appellant, and as, in fact, it was not his object in any way to disturb the decree, we think that under the law, no appeal lay against it to the Lower Appellate Court.

In this view of the case, we think that the Lower Appellate Court had no jurisdiction to entertain the appeal in question ; and we therefore set aside the judgment of that Court and we confirm the decree of the first Court. We think that the special respondents must pay the costs of appeal in the Court below and in this Court.

The 4th January 1870.

Present :

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

Admission—Estoppel.

Case No. 1472 of 1869.

Special Appeal from a decision passed by the Subordinate Judge of Bhaugulpore, dated the 30th March 1869, *reversing a decision of the Moonsiff of that district, dated the* 10*th April* 1867.

Nunhoo Sahoo (Plaintiff), *Appellant,*

versus

Boodhoo Jummadar (Defendant), *Respondent.*

Baboo Lukhee Churn Bose for Appellant.

Baboo Oopendro Chunder Bose for Respondent.

The mere fact of a vendor declaring in her deed of sale of a moiety of a landed estate that she was the proprietor only of that moiety and that the other moiety belonged to her deceased sister's son, was held not to be conclusive evidence against her being proprietor of the other moiety nor to injure the right of a purchaser from her of such moiety.

Loch, J.—THE Lower Appellate Court appears to us to have made quite a new case in the judgment passed by him on remand. He states that from the three deeds of sale executed by Mussamut Sakran,—one dated 22nd December 1861 in favor of Rohim Bux ; and another, 15th December 1864 ; and the third, 25th February 1866, in favor of the plaintiff,—that the vendor Mussamut Sakran, did, as heir of her father, Khaja Noorudin, execute these several deeds ; and further that the plaintiff's witnesses have also stated that the property originally belonged to Noorudin, who left his widow Mussamut Tajan and two daughters Sakran and Mussamut Misrun ; that as the property belonged to the vendor's father, Noorudin, each of the daughters would obtain a 7 annas share and the mother 2 annas share ; that it was not of any importance whether it be proved that Misrun died before her mother, for that circumstance would only affect the two annas share ; but that as the vendor Sakran did in her deed of sale of 22nd December 1861, declare herself to be the proprietor only of a moiety of the property and that Ameer Hossein was the proprietor of the other moiety, she could not now be allowed to repudiate that statement and to claim the whole 16 annas as her own.

The plaintiff's case was this, that the property belonged to Tajun; that she had two daughters, Misrun and Sakran; that Misrun died before her mother, leaving a son Ameer Hossein; that in consequence of Misrun pre-deceasing her mother, the whole property descended to Sakran on the death of Tajun; that Sakran sold a moiety in 1861 to Rohim Bux, and the other moiety to the plaintiff. It was therefore quite necessary to determine, which the Lower Court failed to do in the previous occasion, whether Misrun had or had not died before her mother. The Judge has now found that she died before her mother, but he has also found that the property was derived from Nuroodin, on whose death 7 annas went to Misrun, 7 annas to Sakran, and 2 annas to his widow Tajun; and he says that this is proved by the deeds of sale executed by Sakran and by the evidence of the plaintiff's witnesses. We have read the deeds of sale and the evidence of the plaintiff's witnesses, and we find, looking at the deeds of 22nd September 1861 and 25th February 1866, which alone are evidence in this case, that Mussamut Sakran has not sold the property as being derived from her father or as heir of her father Nuroodin. She merely declares herself to be the daughter of Nuroodin, and in the latter deed of sale calls it *mourussee*, which would be the term equally applicable to property if derived from her mother Tajun. We further observe that none of the plaintiff's witnesses has mentioned the name of Nuroodin. They say that the property belonged to Tajun and that it descended to Sakran. We cannot understand how the Subordinate Judge made such a mistake as regards the purport of the evidence in this case.

Then with regard to the statement made in the *kobala* of 1861, it is true that Mussamut Sakran states that she was entitled to a moiety of the property, and that the other moiety belonged to Ameer Hossein. The Subordinate Judge has treated this statement as an estoppel, though this Court pointed out in their judgment of remand that it could be nothing more than a strong piece of evidence against Sakran, but it would not be conclusive evidence against her, nor would it injure the right of the purchaser; and in the absence of any estoppel, we think the order of the Lower Court must be set aside, as there is nothing beyond that statement to prove that the vendor Sakran was not entitled to the whole 16 annas. We reverse the order passed by the Subordinate Judge and restore that of the first Court. The appellant will obtain his costs of this Court and of the Lower Appellate Court.

The 4th January 1870.

Present:

The Hon'ble F. B. Kemp and F. A. Glover, *Judges.*

Attachment—Malice—Damages.

Case No. 54 of 1869.

Regular Appeal from a decision passed by the Judge of Patna, dated the 21st December 1868.

Velaet Ali Khan and another (Defendants), *Appellants,*

versus

Matadeen Ram and another (Plaintiffs), *Respondents.*

Messrs. G. C. Paul and *R. E. Twidale* and *Syud Ameer Ali* and *Moonshee Mahomed Eusuff* for Appellants.

Messrs. G. and *C. Gregory* and *Baboo Onookool Chunder Mookerjee* for Respondents.

Certain hoondees which V. A. & Co. had discounted for *P* having been dishonored by the drawees, V. A. & Co. sued *P* for the value of the bills and applied under Section 81, Code of Criminal Procedure, to have certain property attached before judgment as belonging to *P*. An attachment having been ordered, *M* and *J* objected by petition that the property belonged to them, and not to *P*, upon which V. A. & Co. applied to have them made co-defendants in the regular suit which had been brought against *P* on the ground that they (*M* and *J*) and *P* were partners in trade. The decision in the suit released the property on the ground that there was no such partnership and that the property belonged exclusively to *M* and *J*. *M* and *J* then sued V. A. & Co. to recover damages sustained by their goods under the above attachment, and profits foregone during the stoppage of their trade by the tortious acts of the defendants.

HELD, that as V. A. & Co. had made the attachment most carelessly and recklessly, and without sufficient or reasonable ground for assuming *M* and *J* to be partners of *P*, they were rightly amerced in damages.

HELD, also, that their act having been one done without a probable cause was such as to evince a malicious motive on their part, and that damages in such a case should be in the nature of a penalty as well as of a compensation.

HELD, further, that plaintiffs were not bound to release their property, and it was no defence to their claim for damages, to say that they might have done so by giving security, nor could their declining to do so shift the responsibility of the illegal acts of the defendants