belonging to the plaintiff's zemindary; and the learned Judges were, therefore, quite justified in holding that it was upon the defendant to show by what right he claimed to use the waters of an aqueduct constructed by the plaintiff upon her own land and at her own expense. The defendant in the presen case has been throughout contending that the land through which the disputed branch flows does not belong to the plaintiff, and it was, therefore, for the plaintiff to show that she was entitled to use it exclusively for her own purposes.

The case is, therefore, remanded to the Lower Appellate Court for the determination of the question how and upon what title the plaintiff has proved his claim to an exclusive right to the use of the waters of the disputed portion of the Rajdar. The costs of this appeal and of the Lower Courts will abide the ultimate result.

The 27th January 1871.

Present:

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

Rights—Prescription—Issues.

Case No. 1327 of 1870.

Special Appeal from a decision passed by the Judge of 24-Pergunnahs, dated the 26th May 1870, reversing a decision of the Sudder Moonsiff of that District, dated the 28th December 1869.

Bhoobun Mohun Mundul and another (Defendants), *Appellants,*

versus

Rash Beharee Paul (Plaintiff), *Respondent.*

Baboos Sreenath Doss and *Hem Chunder Banerjee* for Appellants.

Baboo Romesh Chunder Mitter for Respondent.

In a suit for the removal of a pucca building recently erected by defendant upon land lying between the premises of the two parties to the dispute, where plaintiff's claim to use the land had been put upon his title as owner:

HELD that, having failed to make out the case originally set forth in the plaint, plaintiff had no right to fall back upon a title by prescription.

HELD that plaintiff's claim must stand or fall upon the strength of his own right, not upon any such finding as that defendant was not entitled to the exclusive use of the land.

Mitter, J.—THE dispute in this case relates to a small piece of land lying between the premises of the two contending parties.

The defendant has recently erected a pucca building upon this land, and the plaintiff seeks to have that building demolished upon three distinct grounds, namely, first, that a portion of the land upon which the building has been erected is his own property; secondly, that he has a prescriptive right to use the remainder as a pathway; and, thirdly, that the erection of the building has deprived him of the use of light and air in his own house.

The Moonsiff, who tried this case in the first instance, after holding a local investigation in person, and going carefully through the evidence on the record, came to the conclusion that the action was without any valid foundation whatever. He found that the plaintiff had completely failed to prove that he was entitled to any portion of the land in dispute, that the alleged right of way did not exist, and that the mere obstruction of one out of several openings in the plaintiff's kitchen could not entitle him, in the absence of all proof of legal right, to have the defendant's building pulled down.

This decision has been reversed by the Judge on appeal, and the present special appeal has been accordingly preferred to us by the defendant.

We are of opinion that the decision of the Lower Appellate Court is erroneous and unjust. After giving a short abstract of the Moonsiff's decision, the learned Judge goes on to say: "The erection of this new building "has deprived the plaintiff necessarily of "air and light, and has subjected him *to* "*other inconvenience*, as, for instance, in "diminishing his facilities of repairing his "wall; and if the defendant has infringed "on the plaintiff's right, whether of *ease-* "*ment or otherwise*, the plaintiff has a cause "of action, and he may claim to exercise "the right which he previously held of "opening doors and windows on the east "side of his house into the lane, if such "lane existed." This is all that the learned Judge has said upon the plaintiff's part of the case, and we are clearly of opinion that it is altogether insufficient to meet the requirements of the suit. The onus of proof was clearly upon the plaintiff, and it was, therefore, for him to make out, not merely that he has been subjected to some inconvenience by the

erection of the building, but that he has a legal right to have that building demolished.

With reference to the alleged obstruction of light and air, which has been so much relied upon by the learned Judge, we have simply to remark that the plaintiff has given no evidence of any kind whatever to prove that he is entitled to have that obstruction removed. It is true that the erection of the building has deprived him of the use of one out of several openings in his kitchen; but he has not been able to adduce a particle of proof, oral or documentary, to establish that he is entitled to the unobstructed use of that opening, either by grant or by prescription.

The other inconvenience relied upon by the learned Judge is the diminution of the plaintiff's "facilities of repairing his wall." On this point, also, the learned Judge seems to have fallen into a very serious error. The case set up by the plaintiff was that a portion of the disputed land was his own property, and that he had reserved it specially for the purpose of enabling himself to repair his wall when necessary. The Moonsiff dismissed this portion of the claim, as we have already observed, upon the ground that the plaintiff had given no evidence of any kind whatever to support it. This is not disputed. On the contrary, it is admitted before us by the pleader for the plaintiff that his client did not prefer any appeal to the learned Judge against that portion of the Moonsiff's decision. Why, then, it may be asked, is the plaintiff to have the defendant's building pulled down, merely because "his facilities of repairing his wall have been diminished," as the learned Judge says? If the disputed land does not belong to him he has no right to use that land for the purpose of repairing his wall. It has been argued that there is evidence on the record to show that the plaintiff had used the disputed land once or twice for such a purpose, and that the Judge ought to be called upon to state his opinion as to whether that evidence is not sufficient to make out a title by prescription in the plaintiff's favor. We are of opinion that this argument is of no force whatever. The plaintiff's claim to use the land in question, for the purpose of repairing his wall, was expressly put upon the ground of his title as owner, and we do not think that he has any right to fall back upon a title by prescription after having signally failed to make out the case originally set forth in the plaint. The learned Judge speaks of the plaintiff's right "whether of easement or otherwise;" but he was bound, in our opinion, to state specifically and precisely what that right was. We have gone through the evidence on the record, and we feel no hesitation in saying that the plaintiff has given no proof of right of any kind whatever.

The remaining part of the Judge's decision merely goes to show that the defendant is not entitled to the exclusive use of the land in dispute, but that there are other parties (no way connected with the plaintiff, however) who are also entitled to use it. But neither of these findings, if findings they may be called, can give any right to the plaintiff to have the building demolished, for his claim must stand or fall upon the strength of his own right, and not upon the weakness of the defendant's.

For the above reasons, we reverse the decision of the Lower Appellate Court, and restore that of the Court of first instance with all the costs incurred by the defendant, both in the Lower Appellate Court and in this Court.

The 27th January 1871.

Present:

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

Loss of reputation—Damages.

Case No. 1722 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Beerbhoom, dated the 21st May 1870, affirming the decision of the Moonsiff of Amdah dated the 11th February 1870.

Madhub Chunder Sircar (Defendant), *Appellant,*

versus

Banee Madhub Roy (Plaintiff), *Respondent*

Baboo Umbika Churn Bose for Appellant.

Baboo Khettur Mohun Mookerjee for Respondent.

Where a false charge led to a party's being prevented going to his house until he had furnished bail, he was held to have suffered inconvenience and loss of reputation, for which an award of 20 rupees as damages was not unreasonable.

Glover, J.— THERE is no ground for this special appeal. It has been found as a fact that the defendant did bring a false charge