prevented him from opening a door in that wall; but that if the opening of that door was the source of any annoyance to the plaintiff by interfering with the privacy of the female members of his family, the plaintiff had a remedy in his own hands by building a wall, or erecting a screen of mats in the face of the opening. With regard to the alleged trespass, the Subordinate Judge found that the witnesses who were called upon to prove that the defendant passed through the plaintiff's court-yard had not substantiated that fact.

It appears to us that substantially this decision is right. There is no doubt, after hearing the circumstances of this case, that the defendant was actuated by malicious motives in opening the door, and that he could not have had any possible object in doing so but to cause annoyance to his brother's family, for we find from the map that the new door is exactly in a line with the privy belonging to the defendant, and that the door of the privy and the door in this wall are exactly opposite one another, so that any one using the privy would be able to overlook nearly the whole of the plaintiff's court-yard. There is also a finding of fact against the defendant as to his having no right of way through the plaintiff's court-yard, and that the sweepings of his house are not carried through the plaintiff's compound. At the same time, we agree with the Subordinate Judge in thinking that the right of privacy is not an inherent right of property; and that it it exists at all, it must be shown to exist by some local usage, by special permission, or by grant, and in this case there is no such local usage, permission, or grant proved. There seems to be no reason therefore why the defendant should not make use of his property in any way he pleases; the wall is undoubtedly his, and he is merely making a door in his own property. The plaintiff, on the other hand, can very easily prevent, if he likes, all possible annoyance on account of this door, inasmuch as the whole of the land on the north side of it belongs to him, and he has only to build a screen or other erection to prevent any body in the defendant's house looking into his court-yard, or in any way disturbing the privacy of his family. The decision in the case of *Mahomed Abdoor Rohim* vs. *Birjoo Sahoo and others*, in Volume XIV., Weekly Reporter, page 103, lays down what we consider to be the right view of the law in deciding questions of this sort; and, following that decision, we must uphold the judgment of the Subordinate Judge.

If, notwithstanding the order which is now made, the defendant commits any trespass upon the plaintiff's property by passing through or over any new screen or erection which the plaintiff may build, of course the plaintiff will have his right of action for trespass. And with reference to the circumstances of this case, and taking into consideration the clear evidence of ill-will and malice which actuated the defendant in making this door, we think that the defendant should not get costs, but that each party should pay his own costs. The appeal is dismissed.

The 25th April 1872.

Present:

The Hon'ble Louis S. Jackson and W. Markby, *Judges.*

Review of Judgment — Presumption — Preliminaries complied with—Evidence.

Case No. 1260 of 1871.

Special Appeal from a decision passed by the Subordinate Judge of Gya, dated the 12th July 1871, reversing a decision of the Moonsiff of Aurungabad, dated the 31st March 1870.

Akkul Sahoo and others (Plaintiffs), *Appellants,*

versus

Abdool Guffoor (Defendant), *Respondent.*

Mr. C. Gregory for Appellants.

Moonshee Mahomed Yusoof for Respondent.

The Court declined to presume in this case that certain preliminaries had not been complied with by the Subordinate Judge in admitting a review of judgment, *viz.*, that he had not satisfied himself that the evidence tendered by the petitioner for review was evidence not previously attainable by him and not in his possession, especially when appellant was unable to show that he had taken any objection before the Subordinate Judge to the document on which the review was granted.

Jackson, J.—This was a suit relating to the possession of a small piece of land originally decided by the Moonsiff of Aurungabad, and afterwards tried on appeal by the Subordinate Judge of Gya. The Subordinate Judge at first on the view which he took of the evidence affirmed the judgment of the Moonsiff. Sometime afterwards, an application was made to him, supported by certain documents, on which he granted a review and reversed the decision of the Moonsiff.

We have been much pressed with several precedents of this Court, in which strong opinions have been expressed with regard to the courses to be taken by Courts of Justice in receiving applications for review.

It is contended in this case that there is nothing on the record to show that the Subordinate Judge, in admitting the review, had satisfied himself that the evidence tendered by the petition for review was evidence not previously attainable by him, and not in his possession, and that consequently the review was one which ought not to have been admitted.

No doubt in several decisions, namely, is one reported in Marshall, page 553, and another in II. Weekly Reporter, page 174, and X. Weekly Reporter, page 432, and in XVI. Weekly Reporter, page 7, observations have been made on the subject which tend to support the contentions of the appellant.

But we are not now called upon to state what are the proper preliminaries to be observed in admitting a review, nor on what principles a review should be admitted. If we were, we might have stated our views. But we are asked to set aside a judgment of the Lower Appellate Court on the ground that certain preliminaries had not been complied with when he granted the review.

In the several cases referred to, the Judges deal with them on their respective merits, and we are not bound to follow their ruling only that there might be uniformity in our decisions on such a point; nor are we bound to reverse the decision of the Lower Court, simply upon the ground that certain forms had not been followed.

On the other hand, we ought, I think, to presume in favor of the Lower Courts that all things have been done as the law requires. I do not therefore find in the circumstances of this case anything that induces me to think that the proceedings of the Court below are in any way contrary to law; and as there is no other valid objection taken to the decision of the Lower Appellate Court, we ought to dismiss the appeal with costs."

Markby, J.—I am of the same opinion. I entirely agree with my brother Jackson, that we have no question now before us as to what are the proper steps to be taken before the admission of a review. We have to decide now whether we ought not to presume that the steps and procedure prescribed by law were followed in the Lower Court; and as a general rule I think that we ought to presume that the proceedings of the Courts below have been conducted according to law, and ought not to presume that the requirements of the law have not been complied with. More especially, we ought not to presume so in this case when the appellant does not show us anything from which we can suppose that he took any objection in the Court below to the document on which the review was granted.

The appeal must be dismissed with costs.

The 25th April 1872.

Present:

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

Right of Suit—Co-sharer—Discharge of Receiver—Act VIII. of 1859, s. 73—Discretion (Non-exercise of, by Lower Court—Interference of Superior Court—Party summoned as Witness under s. 170—Lawful Excuse—Witness's Expenses (tender of.)

Regular Appeals from a decision passed by the Subordinate Judge of Beerbhoom, dated the 28th August 1871.

Case No. 274 of 1871.

Ishen Chunder Sen (one of the Defendants), *Appellant,*

versus

Onath Nath Deb (one of the Plaintiffs), *Respondent.*

Baboos Gopal Lall Mitter and *Nil Madhub Sen* for Appellant.

Baboos Mohinee Mohun Roy and *Rajendro Nath Bose* for Respondent.

Case No. 276 of 1871.

Mr. Herbert Cowell (Plaintiff), *Appellant,*

versus

Ishen Chunder Sen (Defendant) and another (Plaintiff), *Respondents.*

Baboos Chunder Madhub Ghose and *Bhyrub Chunder Banerjee* for Appellant.

Baboos Gopal Lall Mitter and *Nil Madhub Bose* for Respondents.

A co-sharer who takes over into his own hands, from the Receiver, the management of his share of the estate, is entitled to sue, or to be made a party, under section 73, Act VIII. of 1859, to a suit already brought for rents which had accrued before the date of the Receiver's discharge.