might have two weeks more to procure and file attested copies of those papers, but the result was that he filed neither originals nor copies. It is now contended that inasmuch as these documents were essential to prove the plaintiff's case, and inasmuch as he was not able to get the originals, and as the copies would be useless to him inasmuch as such copies could not be attested by the witnesses whose evidence he could adduce, the Court should have sent for these records of its own motion. It appears to us that no Court is bound to go out of its way to assist litigants in such a manner. The law gives every facility for persons requiring documents to get them. Section 136 lays down the rule which governs such cases, and before the plaintiff could come up to this Court with a plea *ad misericordiam* like the present, he ought to have shown that he applied to the Court in whose temporary custody these documents were, to have them returned to him, on deposit, if necessary, of properly attested copies with the *nuthee*, and that the Court had refused so to return them. If the Court had refused, the plaintiff could then have proceeded under section 138 and asked the Court trying the case to send to the Court where the records were, desiring that Court to forward the papers required. But the plaintiff took neither of these steps although he had ample time given him for so doing. Under these circumstances, it is impossible to say that the Subordinate Judge was wrong in deciding the case on the evidence before him, and on that evidence he has, found as a fact that the plaintiff has altogether failed to prove his contention.

The special appeal must be dismissed with costs.

The 25th April 1872.

Present:

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

Opening a Door in one's Property (to Annoyance of another)—Evidence of Malice and Ill-will—Right of Privacy—Costs.

Case No. 393 of 1871.

Special Appeal from a decision passed by the Subordinate Judge of Dacca, dated the 11th January 1871, reversing a decision of the Sudder Moonsiff of that district, dated the 15th June 1870.

Kalee Pershad Shaha (Plaintiff), *Appellant,*

versus

Ram Pershad Shaha (Defendant), *Respondent.*

Baboo Sham Lall Mitter for Appellant.

Baboo Rash Beharee Ghose for Respondent.

In this case the defendant was held entitled to make a door in his own property, notwithstanding that it was proved to interfere with the privacy of the female members of the plaintiff's family, and to have been otherwise a source of annoyance to him; the right of privacy not being an inherent right of property, but requiring to be proved by local usage, permission, or grant.

Considering however the evidence of ill will and malice which actuated the defendant in making the door, he was not allowed his costs.

Glover, J.—This was a suit by one brother against another to have a door which has been opened by the defendant in a wall, separating the premises of the two brothers, closed, on the ground that by it the privacy of the plaintiff's family is interfered with, as it opens into the private court-yard of the plaintiff's house, where the female members of his family cook, draw water from the well, and bathe. There is also a further prayer to the effect that the defendant may be restrained from passing through this door into the plaintiff's court-yard.

The defence set up was that the door was an old door which had been in existence for a period of more than 12 years, and that the plaintiff's suit was therefore barred by limitation. On the merits defendant alleged that no injury was caused by the opening of the door, and that the defendant had on several occasions passed through it into the court-yard of the plaintiff, with the plaintiff's consent.

The Moonsiff went to the spot, and, in accordance with an order of this Court, prepared a map of the place. He decided that the door was newly opened out by the defendant in the separating wall; that that door was useless for all purposes to the defendant; that in his opinion it was made simply for the purpose of annoying the plaintiff. He, therefore, ordered it to be closed, and the defendant to be enjoined not to commit trespass on the plaintiff's premises.

The Subordinate Judge took a different view of the case, except so far as the period of time when this door was made. He held that the defendant had failed to prove that it was an old door, and that the plaintiff's case was not barred by limitation. For the rest he considered that the defendant was merely exercising his rights of property in his own wall, and that there was nothing which

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.