

JUDGMENT.

The court are of opinion that the defendants, though punished for the assault, are answerable for the after-consequences in a civil action incidental on the injuries received.

They are of opinion that the action will lie, and that all the defendants must be held responsible for the decree as the principal sudder ameen finds they are all guilty of the assault, in consequence of which the plaintiff's leg was amputated.

The third ground is of no force.

The decree is for a specific sum of money, as maintenance, for the loss which the petitioner had sustained, by not being able to work for a specific period at the rate claimed, which does not appear to have been contested. The appeal is dismissed with costs.

[12] *The 11th January, 1855.*

PRESENT: SIR R. BARLOW, BART, H. T. RAIKES, AND
B. J. COLVIN, ESQRS., *Judges.*

CASE NO. 477 OF 1853.

Special Appeal from the decision of Mr. John Weston, Second Principal Sudder Ameen of Tirhoot, dated 20th April 1853, affirming a decree of Lalla Bhyro Dutt, Moonsiff of Dulsing Serai, dated 27th December 1851.

DULLO KOONWUR AND OTHERS (*Plaintiffs*), *Appellants v.* BUNDHOO
KOONWUR AND OTHERS (*Defendants*), *Respondents.*

[*Pre-emption—Claim not made instantaneously—No unnecessary delay—Time for reflection—Sui not to be dismissed.*]

Order of remand, no unnecessary delay in making the claim to pre-emption being proved, and time for reflection being requisite.

Vakeel of Appellants—Baboo Ramapersaud Roy.

THIS case was admitted to special appeal on the 21st November 1853, under the following certificate recorded by Messrs. A. J. M. Mills and H. T. Raikes :

“This is a suit for possession of a village on the right of pre-emption.

“The moonsiff dismissed the claim. On appeal, the principal sudder ameen confirmed the moonsiff's judgment, on the grounds that the forms necessary for claiming pre-emption, as prescribed by the Mahomedan law, had not been duly observed by the plaintiff, inasmuch as he had not made an *instantaneous* claim.

“We admit a special appeal to try the following point, whether, with reference to the decision of the full bench in the case of Lohun Roy *versus* Domun Roy, dated the 10th of August 1853, the requirements of the Mahomedan law have not been satisfied?”

JUDGMENT.

With reference to page 570 of the *Hidaya*, volume 3rd, on pre-emption and the precedent of this court, at page 704 of *Sudder Dewanny Decisions*, 10th of August 1853, we consider that the lower court has drawn a deduction contrary to law, in declaring that the plaintiff's claim is liable to dismissal on the grounds set forth in the decision.

The cause of the plaintiff not making an instantaneous claim is said to have proceeded merely from inability at the moment to speak or express his wishes; but the law referred to provides that time for reflection should be allowed, and no unnecessary delay is alleged against the plaintiff in the evidence, which has guided the court in its finding on this point. We reverse the decision of the [13] lower court and remand the case that the court may proceed to dispose of the case, on its merits, without further reference to the objection *now* overruled by this court.

The 11th January, 1855.

PRESENT: SIR E. BARLOW, BART., H.T. RAIKES, AND
B. J. COLVIN, ESQRS., *Judges.*

CASES NOS. 519 AND 520 OF 1853.

Special Appeals from the decision of Mr. James Grant, Judge of Dinagopore dated 6th May 1853, reversing a decree of Moulvee Itrut Hossein Khan Sudder Ameen of that district, dated 26th April 1852.

MAHARAJA TARUKNATH ROY, (*Plaintiff*), *Appellant* v. ISWURCHUNDER
ACHARJEA (*Defendant*), *Respondent.*

[*Vendor and purchaser—Alleged defect of title—Absence of fraud on seller's part—Speculative injury to title from possible adoption by widow—Alleged breach of conditions by seller—Suit for refund of earnest money—Omission by lower appellate court to give finding on material issue—Remand.*]

Order of remand, the lower appellate court having omitted to decide a particular point.

Vakeel of Appellant—Baboo Ramapersaud Roy.

THESE cases were admitted to special appeal on the 13th December 1853, under the following certificates recorded by Messrs. A. J. M. Mills and H. T. Raikes:

Mr. A.J.M. MILLS.—“The particulars of these cases are fully stated in pages 23, 24 and 25 of the Zillah Decisions for Dinagopore.

“The claim is for return of rupees 533, earnest-money with interest, paid for 4½ annas of the lot Delvilpore, on the allegation that the title of the seller was incomplete.

“The sudder ameen decreed the return of the earnest-money on the ground that defendant had not authority to sell 4 annas absolutely and 2 annas in putnee, because he had not a clear title to the above 6 annas.

“The judge reversed the sudder ameen's decision and decreed the appeal with costs; he remarked that the *putneedar* had one-fourth of the profit, and the defendant retained three-fourths, which is much more than sufficient for the allowance to the step-mother, and that therefore there was no fraud on the part of the defendant in the transaction.

“I admit a special appeal to try the following points:

First.—Whether, in consequence of the incompleteness of the title of the seller to the 6 annas, the plaintiff is not entitled to receive back the earnest-money?

“*Secondly.*—Whether the decision of the judge is not incomplete, in consequence of his giving no opinion on the facts found by the [14] principal sudder ameen that the defendant failed to conform with certain conditions of the *byenama*?”

Mr. H. T. RAIKES.—“I do not concur in the admission of this application.