

[10] The 11th January, 1855.

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

CASE NO. 435 OF 1853.

Special Appeal from the decision of Roy Ramlochan Ghose, Principal Sudder Ameen of Zillah Nuddea, dated 23rd March 1853, reversing a decree of Golaum Rubbanee, Moonsiff of Sooksangore, dated 26th March 1852.

SUSHEE CHEEREEMAR AND OTHERS (*Defendants*). *Appellants v.*  
SUROOP CHEEREEMAR (*Plaintiff*). *Respondent.*

[*Tort—Assault—Infliction of punishment by Criminal Court—Liability for damages in civil suit also—Measure of damages—Maintenance for period of consequent disability to work.*]

*Held* that the defendants, though punished for an assault were answerable for the after-consequences in a civil action. Maintenance for the period of disability to work allowed.

*Vakeel of Appellants*—Baboo Sumbhoonath Pundit  
*Vakeel of Respondent*—Baboo Poornoochunder Roy.

THIS case was admitted to special appeal, on the 19th September 1853, under the following certificate recorded by Messrs. J. R. Colvin and J. Dunbar:

"The plaintiff, Suroop Cheereemar, sued the petitioners with a view of obtaining an order for a monthly allowance of rupees 2, for a period of 10 months and 20 days, in consequence of his having been incapacitated to gain his own livelihood by an injury inflicted by the defendants.

"The moonsiff dismissed the suit, on the grounds that it was not proved by the evidence taken before him, or by that given in the criminal court, that the plaintiff's leg had been fractured by violence made use of by the defendants; and further, that the record of the case, in the criminal court, showed that the plaintiff had gone to the premises of the defendants, for an unlawful purpose.

"In appeal, the principal sudder ameen held it to be established on the evidence, that, in consequence of the violence used towards him by the defendants, the plaintiff had been compelled to submit to amputation of his leg in the station hospital. On the ground therefore that he had lost a limb, and cannot labour for his own support, he passed a decree for the amount claimed. Several objections are urged in the present application; of these, it seems necessary only to notice two:

"*First.*—Whether such an action as the above will lie at all?

"*Second.*—If it will lie, then whether the valuation of the plaintiff is correct, with reference to article 3, schedule A, Regulation X of 1829?

[11] "We admit the special appeal to try, as the point is new, whether an action of this kind will lie in our courts, and if so, whether the decree has been given upon a correct principle of valuation?"

The appellant urged three grounds for admission in his special application:

*First.*—That having been punished criminally, he was not subject to an action for damages.

*Secondly.*—That a judgment against all the defendants is wrong, because it is not proved, nor is it charged that *all* the defendants joined in breaking his, plaintiff's, leg.

*Thirdly.*—That plaintiff's leg was cut off in defendants' absence.

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.

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

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

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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.