1866. December 17. C. P. No. 160 of 1866.

of his rights has used force or otherwise committed a breach of the peace, there are sufficient ways in which the authority of the Civil Court may be vindicated, and the breach of the public peace, or the use of force to private persons adequately punished; but to go further than this would be to distort every instance of a trespass or assault in assertion of the rights of property into a case of robbery or dacoity. On this ground, therefore, which we think admits of no question, and which goes to the whole merits of the case, we think that there is nothing, as apparent from the evidence before the Magistrate, which could legally justify a charge of dacoity against these accused persons, and we must therefore set aside the order for their committal made by the Session Judge under Section 435, Criminal Procedure Code.

It is accordingly ordered that the said order of the Session Court be and the same hereby is annulled.

Order annulled.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 415 *of* 1866.

SARASVÁTI and another.....*Special Appellants.*

PACHANNÁ SETTI and another....*Special Respondents.*

Where the Statute of Limitations was pleaded for the first time in a petition for Review of the judgment of the Lower Appellate Court :— *Held* that, the review being part of the proceedings in Regular Appeal, the question was whether the Statute may be pleaded for the first time in Regular Appeal, and that where, upon the admitted facts, it is clear that the statute is a bar, it may be pleaded for the first time in Regular Appeal.

1866. December 19. S. A. No. 415 of 1866.

THIS was a Special Appeal from the decision of M. J. Walhouse, the Civil Judge of Mangalore, in Regular Appeal No. 6 of 1865, reversing the Decree of the Court of the District Munsif of Puttur in Original Suit No. 644 of 1861.

Subbarayulu Chetti for *Parthasarathi Ayyangar*, for the special appellants, the plaintiffs.

Rajagopala Charlu and *Srinivasachariyar*, for the special respondents, the first and seventh defendants.

The Court delivered the following

(*a*) Present : Collett and Ellis, J. J.

1866.
December 19.
S. A. No. 415 *of* 1866.

JUDGMENT :—At the hearing of this appeal it was ultimately admitted that, upon the facts of the case, the plaintiffs must be barred by the statute of limitations, if the defendants have properly pleaded it. The bar was not pleaded in the Court of First Instance, nor at first in the Lower Appellate Court, but it was so in a petition for review of judgment presented to that Court ; there was a re-hearing of the appeal and the Lower Appellate Court then dismissed the suit as being barred. The review was part of the proceedings in the regular appeal, and the question therefore is whether the statute may be pleaded for the first time in a regular appeal. We have of course been referred to the case reported in I M. H. C. Reps. 358, and II *id.* 238. The latter case differed from the former in that it was there sought to set up the bar for the first time in special appeal. The former was indeed a special appeal, but the bar had been pleaded in regular appeal, and the point decided was that under certain circumstances it was not too late to plead the bar for the first time in regular appeal. We have also been referred to a case which has not been reported, Regular Appeal 28 of 1864, decided by the Chief Justice and Mr Justice Phillips ; and in that case, certainly, this Court allowed the bar to be pleaded for the first time in a regular appeal before it, and the facts of the case being clear, declined to send down an issue, it not being suggested that there existed any evidence to meet the bar. We should scarcely be acting consistently with these two last decisions of this Court, if we did not hold that in the present case, where upon the admitted facts it is clear that there has been adverse possession sufficient to bar the plaintiffs' suit, the 1st defendant was not too late in pleading the bar in the course of the regular appeal before the Lower Appellate Court. Upon the authority, therefore, of these prior decisions of this Court, we dismiss the present appeal and with costs.

Appeal dismissed.