1871. *February* 14. *A. No.* 249 *of* 1870.

not at all without hope that this purely historical matter may by some device be rendered very practically useful to me."—To permit such a suit, would, indeed, be to render litigation eternal. I am of opinion that the decree of the Lower Court should be reversed and the original suit dismissed. There should, however, be no costs throughout.

INNES, J:—I hold to the opinion which I have already expressed in other cases (reported at pages 333 and 378, II M. H. C. Reps.) that where there are no interests to be protected, there is no foundation for a suit for a declaratory decree. Here what is alleged and proved is a bare right of property. The right of action for possession is barred, and the plaintiff has no interest, present or contingent, which the declaration of his bare title could fortify or conserve. In cases in which a declaratory decree might operate as a protection there are sometimes circumstances which should induce a Court to refrain in its discretion from passing such a decree, but, in a case like the present, I think there is no discretion, because in my opinion there was no ground for coming to the Court at all, and the suit should not have been entertained. I concur in reversing the decree passed in appeal.

Appeal allowed.

APPELLATE JURISDICTION (*a*)

Criminal Regular Appeal No. 358 *of* 1870.

SHRIRAM VENKATASÁMI...*Appellant* (*1st Prisoner.*)

In the trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (Sec. 401, Penal Code), the Judge should, in his charge, put clearly to the jury—

1. The necessity of proof of association.

2. The need of proving that that association was for the purpose of habitual theft, and that habit is to be proved by an aggregate of acts.

1871. *February* 21. *A. No.* 358 *of* 1870.

THIS was an appeal against the sentence of H. Morris, the Session Judge of Rajahmundry, in Case No. 58 of the Calendar for 1870.

(*a*) Present : Holloway, and Kindersley, JJ.

1871. *February* 21. *C. R. A. No.* 358 *of* 1870.

The appellant was tried with three others for the offence of belonging to a gang of persons associated together for the purpose of habitually committing thefts, under Sec. 401 of the Indian Penal Code.

The prisoners belonged to the tribe of snake-charmers. It was shown at the trial that several thefts had occurred in the same neighbourhood about the same time, and various articles produced, which had been recovered by the Police, with the assistance of the prisoners, were identified as stolen. It was also sworn that 1st and 2nd prisoners had confessed, but the prisoners denied this, admitting, however, that they had pointed out the places of concealment of the property before the Court. The Session Judge directed the jury as follows :—"There seems to be no doubt that the articles now before the Court consist of stolen property. The points for you to decide are,—Whether the prisoners stole them, and whether the number of thefts which occurred about the same time in the same neighbourhood show that the prisoners form part of a gang associated for the purpose of habitually committing thefts."

No counsel were instructed.

The Court delivered the following

JUDGMENT :—In this case we are of opinion that the summing up the defective, in not having put clearly to the jury—

1. The necessity of proof of association.

2. The need of proving that that association was for the purpose of habitual theft, and that habit is to be proved by an aggregate of acts.

On reading the evidence, however, we cannot say that the prisoners have been so prejudiced by the want of clearness as to justify us in ordering a new trial. We, therefore, dismiss this petition.

Appeal dismissed.
