*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ram Coomar Coondoo and others* v. *Chunder Canto Mookerjee, from the High Court of Judicature at Fort William in Bengal; delivered 25th November*, 1876.

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Present:

Sir Barnes Peacock.
Sir Montague E. Smith.
Sir Robert P. Collier.

THIS suit was instituted by the Appellants, who were the successful Defendants in two former suits brought by one McQueen and his wife against them, to recover from the Defendant, Chundur Canto Mookerjee, who was neither an original nor added party in those suits, the amount of the costs incurred by them in that litigation, and which McQueen and his wife, by reason of their poverty, were unable to pay.

The principal suit of the McQueens (the other being for mesne profits only) was brought in the Hooghly Court to recover from the present Plaintiffs some lands in Hooghly, which their father had purchased of one Bebee Bunnoo.

Mrs. McQueen was the illegitimate daughter of one McDonald and Bebee Bunnoo, and she claimed the property as her father's, and as being entitled to it, after her mother's death, under his will. The defence of the now Plaintiffs in that suit was that Bebee Bunnoo was either the real owner, or had been allowed by McDonald to deal with the property as owner, and that their father was a purchaser from her without notice of any other title. It appears that they and their father had held possession of the

property for 24 years after the purchase, and had greatly improved it.

The principal Sudder Ameen held the suit to be barred by limitation, and dismissed it. The High Court (finding that Bebee Bunnoo had died within 12 years of the suit) reversed his Judgment, and having retained the case, and tried it on the merits, passed a Decree in favour of the then Plaintiffs, the McQueens.

On an Appeal to Her Majesty, the Decree of the High Court was reversed, and it was ordered that the suits should be dismissed, and that the then Defendants (the now Plaintiffs) should have their costs in India, and of their Appeal to Her Majesty.

These costs amounted to a large sum, and the McQueens were unable to pay them.

The connection of the Defendant Mookerjee with the above litigation, and the facts relied on to support the present action, will now be referred to.

A special agreement was entered into between the McQueens and Mookerjee, which recited an apparently good title of the former to the property. By this agreement Mookerjee was appointed the Attorney and Mooktear of the McQueens to conduct the litigation against the present Plaintiffs. On the one side he undertook to manage the suit, to make all necessary advances for the purpose, and further to make an allowance of 150 rupees per mensem to the McQueens for their support during the pendency of the proceedings. On the other side they agreed in effect that Mookerjee should have the management of the suit, they however assisting him, unless it happened that McQueen could give his whole attention to the litigation, in which case he was to have the conduct of it, "but under the control of Mookerjee."

It was stipulated that all the advances should be repaid with interest at 12 per cent., and that, as remuneration for his trouble and risk, Mookerjee should have a third part of "the clear net profits" of the suit; and, by way of security, it was agreed that he should receive all moneys, and take possession of all lands recovered, and after satisfying his own claims pay over the balance to the McQueens.

This power of Attorney was made irrevocable, unless upon the terms that the McQueens should repay all the moneys advanced with interest at

12 per cent., and a further sum of 2,000 rupees as liquidated damages.

McQueen certainly did not give his whole attention to the suits; and (although he occasionally saw the pleaders) they were really managed by Mookerjee.

It appears that after the present Plaintiffs had obtained leave to appeal from the Judgment of the High Court in the original suit, the McQueens obtained possession of the property. The Court having ordered the possession to be restored, unless the McQueens gave security to the amount of 12,000 rupees to repay what would be due in case the Decree should be reversed, the present Defendant gave a bond to the above amount as such security.

Pending the Appeal to Her Majesty, Mookerjee purchased of the McQueens all their interest in the principal suit, and the suit for mesne profits, for 22,000 rupees, out of which he was to deduct 12,000 rupees for the advances he had made to them, and from this time he appears to have conducted the Appeal in his own interest.

It should be stated that in the former suit the now Plaintiffs — upon the agreement between Mookerjee and the McQueens coming to their knowledge—applied to the Judge to have Mookerjee made a party to the suit under the 73rd clause of Act VIII, in order that, if successful, they might make him responsible for costs (Record, page 106). The Judge refused the application. Upon the Appeal to the High Court by the McQueens, the present Plaintiffs raised this point in their memorandum of cross-appeal, but no notice appears to have been taken of it in the Judgment of that Court.

The plaint in the present action alleges that the Plaintiffs being in lawful possession as owners of the property in question, the Defendant, knowing this was so, maliciously conspired with the McQueens to bring a suit in their names to take the possession from him, and in furtherance of this conspiracy entered into the agreement already described, which is set out at length. It then alleges that the agreement contains false and fraudulent recitals of a pretended title in the McQueens, and that it "savours of champerty and maintenance, and is otherwise wholly illegal and contrary to public

policy," and was entered into "for the purpose of barratrously maintaining an unjust and oppressive suit against the Plaintiffs" in the names of persons who had no right and were without means to pay the costs. It then avers that the former suit was brought "maliciously and without reasonable and probable cause," and after describing the proceedings in the suit, and the facts showing the Defendant's connection with them, alleges that "the litigation was instigated and carried on by the Defendant at his own expense, and with a view to his own benefit, and that he was the real mover, and unlawfully used the procedure of the Court for his own benefit."

If all these allegations in the plaint, or so many of them as aver that the suit was brought or instigated by the Defendant, maliciously and without probable cause, had been proved, this action would undoubtedly have been sustained, upon the principle that the prosecution of legal proceedings which are instigated by malice, and are at the same time groundless, is a wrong to the person who suffers damage in consequence of them.

This principle is thus stated by Mr. Justice Williams in Cotterill *v.* Jones (11 C. B. 735) :—

"It is clear no action will lie for improperly putting the law in motion in the name of a third person, unless it is alleged and proved that it is done maliciously and without reasonable or probable cause; but if there be malice and want of reasonable or probable cause, no doubt the action will lie, provided there be also legal damage."

In the present case, however, both the Courts below have found that neither malice nor the absence of probable cause have been proved. Their Lordships entirely agree with the Courts in India on this point, and it appears to them that the facts present a case having a wholly different aspect.

With regard to the motives of the Defendant it is not pretended that he entertained any ill-feeling or malice in any sense towards the Plaintiffs. The terms of the agreement, and his large expenditure, show that he was prompted in what he did by his having formed a favourable and sanguine opinion of the title of the McQueens, and by the hope of a profitable return for his advances. Nor can the suit be said to have been wanting in probable

cause, when the two learned Judges of the High Court who heard it on Appeal decided in favour of the then Plaintiffs. Indeed, it was properly admitted at their Lordship's bar that the case must be considered as if the allegations of malice and want of probable cause were struck out of the plaint.

These allegations being eliminated, the question is whether the action can be maintained upon either of the two grounds argued at the bar, which, stating them generally, are :—

1. That the agreement and acts of the Defendant amounted to champerty, or were otherwise illegal as being against public policy, and that the Plaintiffs have suffered special damage from them.

2. That the Defendant was the real actor in the former suits and had an interest in them, and was, therefore, responsible for the costs of them.

The question whether the law of maintenance and champerty, or any rules analogous to that law, as it exists in England, have been introduced into and form part of the law of India, has been for a long period in controversy in the Indian Courts. A beadroll of decisions from 1825 to the present time was cited at the bar, and it certainly appears from them that the views of the Courts have not been uniform, and that great diversity of opinion has prevailed.

The earliest case referred to occurred in the year 1825. A pauper Plaintiff, in his petition of appeal to the Sudder Court, disclosed the fact that he had agreed to give half the estate in litigation to a third person in consideration of advances made to prosecute the Appeal. The Court, after directing a search in the records for precedents of such a transaction, and none having been found, declared that "the transaction savoured strongly of gambling," and also that the contract to give half of a large estate for a comparatively small advance was "by no means fair," and ordered that unless the agreement was cancelled the Appeal should not be entertained. (Ram Gholam Sing *v.* Keerut Sing, 4 S. D. A. 12.)

In 1836 the Sudder Court refused to enforce against a successful litigant an agreement he had made to give two annas of the estate if recovered in consideration of advances made to carry on the suit. They held first, that the estate being family property

could not be thus disposed of; but they also held on the authority of the decision in 1835 that the transaction was of an illegal character as a species of gambling, and could not be sanctioned in a Court of Justice. (Brijnerain Sing *v.* Teknerain Sing, 6 S. D. A. 131.)

In 1840 a similar agreement to that in the last case came before the Court: one Judge thought it was not proved; but the other, Mr. Tucker, held, following the two former decisions, that "the agreement was illegal, thus (as he said) establishing the point for future guidance in all similar cases." (Zuhoroonissa Khanum *v.* Ruseck Lal Mitter, 6 S. D. A. 298.)

In a short note of a similar case in 1849 the Court is reported to have said: "As the precedents of the Court have held that champerty is illegal, we cannot enforce any condition (of the kind) in favour of the Plaintiffs." (Andrews *v.* Maharajah Sreesh Chunder Raee, 5 S. D. A., Bengal, 340.)

In the next case the current of opinion underwent a marked change.

In 1852 a case was brought before a full Sudder Court consisting of five Judges, in which the Principal Sudder Ameen had dismissed a suit because the Plaintiff had obtained the funds to prosecute it by means of an agreement which he deemed to be champertous. This decision of the Principal Sudder Ameen was, in any view of the law, erroneous; but the Judges took occasion to express their opinion on the general question. Sir R. Barlow says: "There is no distinct law in our Code which lays it down to be illegal for one party to receive and another to give funds for the purpose of carrying on a suit on promise of certain consideration in the form of a share of the property sued for, if decreed to the Plaintiffs." Mr. W. B. Jackson, whilst he thought the precedents of the Court (referring to the cases already mentioned) had held champerty to be illegal, says: "But the matter having been now brought up generally for consideration before the whole Court, I have no hesitation in declaring my opinion that an arrangement of the nature of champerty is not of itself illegal or void." Again he says: "I know of no law against such an arrangement, and there is certainly no reason why it should

be declared illegal. Such arrangements must stand or fall according to the peculiar nature of their conditions. They are liable to question like any others where a suit is brought to enforce or avoid them." The other three Judges construe the former precedents (with one exception) as holding only "that, as between a Plaintiff and a party advancing *funds* to him to carry on his case, the Courts will not recognize and enforce agreements which appear to be exorbitant and to partake of the nature of gambling contracts." (Kishen Lal Bhoonick *v.* Pearee Soondree, 8 S. D. A., Bengal, 394.)

This case appears to have been generally regarded as a leading decision. Mr. Justice Glover so treats it in a case which came before the High Court so late as 1868, and refers to it as deciding that champerty *per se* was not illegal (9 W.R., 490). In this same case, however, Mr. Justice Macpherson said he did not feel it necessary to decide the question; and in consequence of the opinions expressed by him and other learned Judges in India in recent cases it will be necessary to advert shortly to some of the subsequent decisions.

In Grove and Another *v.* Amirtamayi Dasi (4 Bengal L.R., 1), which was the case of a contract of a champertous character made by a Hindoo widow, Mr. Justice Phear, after a full review of the English and Indian cases, expressed an opinion that the law which renders champerty and maintenance illegal in England is in force at least within the Presidency towns; and further that agreements of that character were against the interests of society in India, and therefore, on grounds of public policy, void. Upon an appeal to the full Court, the Chief Justice (Sir Barnes Peacock) did not adopt this ground of decision. He expressed his opinion thus:—"That the deed was not binding on the reversionary heirs, if not upon the ground of champerty, upon the ground that it was an unconscionable bargain, and a speculative, if not gambling contract." Mr. Justice Macpherson agreed with Mr. Justice Phear in thinking that the agreement was void, as being against public policy.

Mr. Justice Holloway in a case which came before the High Court of Madras in its original jurisdiction in 1870, expressed a strong opinion that the English statute and common law relating to

champerty and maintenance prevailed in that Court, and rendered contracts bearing that character void. He also, with some vehemence of language, denounced such contracts as being contrary to public policy. The opinion expressed by Mr. Justice Holloway on the application of the English statute and common law was not necessary to the decision of the case, for the agreement sued upon was clearly extortionate, and there were other sufficient grounds for the refusal of the Court to enforce it. (Mulla Jeffarji Tyer Ali Saib *v.* Yacali Kadar Bi, 7 Madras, 4 C.R., 128.)

This opinion of Mr. Justice Holloway seems to be directly opposed to the view expressed by Chief Justice Scotland in delivering the opinion of the High Court of Madras in a former case (Pitchakutti Chetti *v.* Ramala Nayakkan, 1 Madras, H.C.R. 153). The Chief Justice there says :—"Maintenance and champerty are made offences by the common and statute law of England, which in this respect has no application to the natives of this country, and in considering and deciding upon the civil contracts of natives on the ground of maintenance or champerty, we must look to the general principles as regards public policy and the administration of justice upon which the law at present rests. To this extent we think the law can properly be applied in perfect consistency with the Hindoo law relating to contracts." (See 1 Strange's Hindoo Law, 275.)

The passage in Strange alluded to by the Chief Justice descants upon the similarity between English and Hindoo law with regard to the invalidity of contracts which violate public policy and the interests of the community.

In a late case in the High Court of Bombay, Westropp, Chief Justice, declined to express any opinion as to the extent to which the law of champerty is applicable to the Presidency towns or in the Mofussil.

To return to the Bengal Presidency, it will be necessary to refer to one more decision only before coming to the Judgments in the present suit. In the case of Tara Soundeeree Chowdhrain *v.* the Court of Wards (20 W.R., 446), the Court (Sir R. Couch being Chief Justice) held that the agreement it was sought to enforce was void, "as being

contrary to public policy, and as therefore not giving any right to sue for the property which was professed to be passed by it." The learned Chief Justice commented upon and adopted the observations of this Tribunal in the case of Fisher *v.* Kamala Naicker (8 Moore's I. A., 170). He also referred with approval to the remarks of Mr. Justice Holloway as to the mischievous effects of such agreements in India.

It is to be observed that in none of the above cases did any question arise as to the liability of the parties who entered into the agreements to third persons.

To come to the Judgments in the present suit. Mr. Justice Macpherson was of opinion upon the point now under consideration that the agreement was illegal and void as being against public policy, and he held, on the authority of the English case of Pechell *v.* Watson, 8 M. and W., 691, that the present suit might be maintained.

In the Judgment of the High Court delivered by Sir R. Couch, C. J., reversing Mr. Justice Macpherson's Decree, the Chief Justice says: "It has been always admitted that the English Common Law and the Statutes as to maintenance and champerty are not applicable, and are considered as having no force in this country. They certainly do not apply to the Mofussil, whatever question there might be how far they had been introduced within the jurisdiction of the Supreme Court. The ground upon which agreements which are champertous, or agreements for maintenance, have been held to be void in this country, is that they are contrary to public policy; or, as described by the Judicial Committee of the Privy Council (referring to the case in 8 Moore), are considered to be immoral and against public policy and such as the law will not enforce here, and treat as void." And he held that, though such agreements were in a sense illegal, they did not amount to "an offence in India so as to give a right of action to a person who might sustain special damage from it, even if such an action might now be maintained against a person committing the offence of champerty in England."

It will now be convenient to refer to two cases before this Committee in which the subject has been to some extent considered. In the case reported in

8th Moore, the Court below having held an agreement to be void for champerty, this tribunal thought the Judgment to be wrong on the grounds that the point had not been raised by the pleadings, and also that the agreement was in no sense champertous, and, this being so, their Lordships observed: "It was unnecessary to decide whether under the law which the Court was administering those acts which in the English law are denominated either maintenance or champerty, and are punishable as offences, partly by the common law and partly by statute, are forbidden." But in the course of the Judgment they made the following observations: "The Court seem very properly to have considered that the champerty, or more properly the maintenance, into which they were enquiring was something which must have the qualities attributed to champerty or maintenance by English law; it must be something against good policy and justice, something tending to promote unnecessary litigation, something that in a legal sense is immoral, and to the constitution of which a bad motive is in the same sense necessary."

It is unnecessary now to say whether the above considerations are essential ingredients to constitute the statutable offence of champerty in England; but they have been properly regarded in India as an authoritative guide to direct the Judgment of the Court in determining the binding nature of such agreements there.

In the more recent case before this tribunal, in which a suit to enforce an unrighteous and champertous bond was dismissed, the following observations were made:—

"With respect to the law of champerty or maintenance, it must be admitted, and indeed it is admitted in many decided cases, that the law in India is not the same as it is in England. The statute of champerty being part of the statute law of England, has of course no effect in the Mofussil of India; and the Courts of India do admit the validity of many transactions of that nature, which would not be recognized or treated as valid by the Courts of England. On the other hand the cases cited show that the Indian Courts will not sanction every description of maintenance. Probably the true principle is that stated by Sir Barnes Peacock

in the course of the argument, viz., that administering, as they are bound to administer justice according to the broad principles of equity and good conscience, those Courts will consider whether the transaction is merely the acquisition of an interest in the subject of litigation *bonâ fide* entered into, or whether it is an unfair or illegitimate transaction got up for the purpose merely of spoil or of litigation disturbing the peace of families and carried on from a corrupt and improper motive."

The result of the authorities, then, appears to be that the English laws of maintenance and champerty are not of force as specific laws in India; and the decisions to this effect appear to their Lordships to rest on sound principles. So far as concerns the Mofussil, there is no ground on which it can be contended that these laws are in force there. The question has chiefly been whether they are in force in the Presidency towns, although the distinction between the Presidency towns and the Mofussil has not been always borne in mind.

It is to be observed that the English statutes on the subject were passed in early times, mainly to prohibit high Judicial Officers and Officers of State from oppressing the King's subjects by maintaining suits or purchasing rights in litigation. No doubt, by the Common Law also, it was an offence for these and other persons to act in this manner. Before the acquisition of India by the British Crown, these laws, so far as they may be understood to treat, as a specific offence, the mere purchase of a share of a property in suit in consideration of advances for carrying it on, without more, had become in a great degree inapplicable to the altered state of society and of property. They were laws of a special character, directed against abuses prevalent, it may be, in England in early times, and had fallen into, at least, comparative desuetude. Unless, therefore, they were plainly appropriate to the condition of things in the Presidency towns of India, it ought not to be held that they had been introduced there as specific laws upon the general introduction of British law. The principles on which the exclusion from India of special English laws rest are explained in the well-known Judgment of the Mayor of Lyons *v.* the East India Company (1 Moore's Indian Appeals, 176). It appears to

their Lordships that the condition of the Presidency towns, inhabited by various races of people, and the legislative provision directing all matters of contract and dealing between party and party to be determined in the case of Mahommedans and Hindoos by their own laws and usages respectively, or where only one of the parties is a Mohammedan or Hindoo by the laws and usages of the Defendant, furnish reasons for holding that these special laws are inapplicable to these towns. There seems to have been always, to say the least, great doubt whether they were in force there, a circumstance to be taken into consideration in determining whether they really were part of the law introduced into them.

It would be most undesirable that a difference should exist between the law of the towns and the Mofussil on this point. Having regard to the frequent dealings between dwellers in the towns and those in the Mofussil, and between native persons under different laws, it is evident that difficult questions would constantly arise as to which law should govern the case.

But whilst their Lordships hold that the specific English law of maintenance and champerty has not been introduced into India, it seems clear to them upon the authorities that contracts of this character ought under certain circumstances to be held to be invalid, as being against public policy. Some of the circumstances which would tend to render them so have been adverted to in the two Judgments of this tribunal already cited.

Their Lordships think it may properly be inferred from the decisions above referred to, and especially those of this tribunal, that a fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being, *per se*, opposed to public policy. Indeed, cases may be easily supposed in which it would be in furtherance of right and justice, and necessary to resist oppression, that a suitor who had a just title to property, and no means except the property itself, should be assisted in this manner.

But agreements of this kind ought to be carefully watched, and when found to be extortionate and unconscionable, so as to be inequitable against the party; or to be made, not with the *bonâ fide* object

of assisting a claim believed to be just, and of obtaining a reasonable recompense therefor, but for improper objects, as for the purpose of gambling in litigation, or of injuring or oppressing others by abetting and encouraging unrighteous suits, so as to be contrary to public policy,—effect ought not to be given to them.

Such, then, being the law on this subject in India, it fails to support the present action. It may be that the contract in this case is unconscionable, and one which ought not to have been enforced against the McQueens if their suit had been successful; but assuming this to be so, the Plaintiffs, in their Lordships' view, have failed to establish that an action arises to them therefrom against the Defendant for the losses and costs of the litigation. By the law of India, as above interpreted, the agreement did not constitute a punishable offence, and the action cannot therefore, as pointed out by the Chief Justice below, be sustained on the ground that where an indictable offence has been committed, and an individual has suffered special loss, a remedy by action is given to him as the party aggrieved, nor does there appear to be any other principle upon which the action, under the circumstances of the present case, can be maintained. Whatever, therefore, may be the rights of the parties to the agreement as between themselves, their Lordships think that the High Court was right in holding that the action of the Plaintiffs against a third party, founded on the alleged champerty, cannot be maintained.

There remains the question whether the action can be supported against the Defendant, as being an actor in the suit, and having an interest in it. It is to be observed that a suit of this kind, in the absence of malice, and of the want of probable cause, is of the first impression, no precedent for it having been found either in England or India. It may be assumed that, under the first agreement, the Defendant acquired a contingent interest in the property the subject of the suit to the extent of one-third share, besides the security for his advances; that he agreed to supply all the funds required to carry on the litigation, and that he obtained the virtual control of the proceedings; for although, under certain circumstances, McQueen was to manage the

suit, and in any case to assist in the management, the supreme control was to belong to the Defendant, subject to a power of revocation by the McQueens on onerous terms, which was not exercised. But this state of things created no legal privity between the Plaintiffs and the Defendant, from which a promise can be implied on the part of the Defendant to pay the present Plaintiffs the costs of the former suit, on which an action of contract can be founded; nor does it establish a legal wrong, for the former suit, as already shown, was brought without improper motives, and upon reasonable cause. It has, however, been contended that it would be only in accordance with justice and equity that he who was the principal mover of a suit, and had an interest in it, should be made liable to the costs. It is obvious that a wide field of new litigation would be opened if, after the termination of the original suit, another independent suit might, on such general grounds, be brought against third persons. Interminable questions would arise as to the degree of meddling and assistance which would create the liability. So far as precedents exist, it is either in the original suit itself, or by the exercise of the summary jurisdiction of the Courts, that any such liability has been enforced. It is ordinary practice, if the Plaintiff is suing for another, to require security for costs, and to stay the proceedings until it is given. The now Plaintiffs were fully aware, during the pendency of the former suit, of the arrangement between the McQueens and the Defendant, but instead of applying for security for costs, they petitioned the Court to make him a co-plaintiff under the 73rd section of Act VIII. Without deciding whether this application was rightly rejected, it is enough to say that its rejection cannot give ground for an action which would not otherwise lie.

The instances in which persons other than parties to the suit have been held liable to costs in England, have been principally those of solicitors over whom the Court exercises disciplinary jurisdiction, as in the case of *re* Jones (L.R. 6 Ch. Ap. 497). The Courts have also ordered the real parties to pay the costs in actions of ejectment, originally on the ground that that action was in form

a fictitious proceeding, and having once assumed this power they have continued to exercise it in the actions substituted for that of ejectment. Again, the Courts, it has been said, would so interfere in case of any contempt or abuse of their proceedings (see Hayward *v.* Gifford, 4 M and W., 194). But all these cases relate to applications either in the cause itself, or to the summary jurisdiction of the Court.

A case in the High Court in Calcutta was much relied on by the Appellant's Counsel. There in a suit brought (in the original jurisdiction) to recover possession of land by a nominal Plaintiff, Mr. Justice Phear, on a motion, made apparently in the suit, ordered the real Plaintiffs to pay the costs. His judgment is placed mainly on the ground that the jurisdiction exercised by the English Courts in actions of ejectment was introduced into the original jurisdiction of the High Court, and was applicable to analogous actions brought to recover land there. The Chief Justice (Sir Barnes Peacock) in affirming this Order on Appeal, supported it not only on the ground on which Mr. Justice Phear's Judgment rests, but on the circumstances of the case, which showed, as he thought, that there had been "a gross abuse of the powers of the Court, and a contempt of Court."

It is obvious that there is nothing in these Judgments which gives support to the contention that an independent action will under such circumstances lie.

It was lastly insisted for the Plaintiffs that if the costs in India were not recoverable, the action ought to be sustained for those incurred in the Appeal to Her Majesty, subsequently to the purchase made by the Defendant, pending that Appeal, of all the rights of the McQueens in the property and the suit. Undoubtedly the McQueens after this purchase became nominal Appellants only, and the claim of the Plaintiffs to recover these latter costs is as strong as a case of the kind can be. But even so, it is not stronger than many cases of ordinary occurrence, as, for instance, trustees suing on behalf of those beneficially interested, or the assignors of choses in action on behalf of their assignees; and in these and similar cases which have long been familiar to the Courts, whilst modes, such as re-

quiring security for costs, have been devised for reaching the real party, no independent action for the costs against a stranger to the Record has ever been sanctioned. Their Lordships therefore think that no distinction can properly be made between the costs of the Appeal and the rest of the costs.

It results from what has been stated, that by English law an action cannot be maintained against a third person on the ground that he was a mover of, and had an interest in the suit, in the absence of malice and want of probable cause. Consequently, if that law governs, the second ground on which it is sought to support the present action fails. And if the law administered in the Mofussil is to be resorted to, the absence of all precedent in a case of such common occurrence affords an irresistible presumption that no such action is maintainable there. In answer to the suggestion that if no precedent exists, it should now be made, it has been already pointed out that where there is neither privity of some kind nor a wrong, the principle upon which actions are ordinarily sustained is wanting. When it is urged that the claim should be decided upon general principles of justice, equity and good conscience, it is to be observed, in addition to the considerations already adverted to, that these principles are to be invoked only in cases "for which no specific rules may exist." Now it appears to their Lordships to result from what has been already observed, that rules may properly be considered to exist which define the character of actions of this kind and the circumstances under which alone they can be brought, and that it would be out of place to resort to these general principles in dealing with such actions. The consequences of such a resort in cases of this character would be to make the law utterly uncertain, to raise, as before observed, interminable questions as to the degree of interference which would sustain the action, and mischievously to multiply and perpetuate litigation after the termination of the original suit. Their Lordships, therefore, feel constrained to hold that in the absence of circumstances to convert the prosecution of the former suit into a wrong, the present action cannot be maintained.

It has been a misfortune to the Plaintiffs that security was not obtained for the costs in the course

of the former suit. Their Lordships also think the Defendant was to blame in not coming forward as the real party in the former Appeal. Under these circumstances, whilst they must humbly advise Her Majesty to affirm the Judgment appealed from, they will make no order as to costs.

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