

**(1868) 12 CAL CK 0003**

**Calcutta High Court**

**Case No:** Special Appeal No. 1858 of 1868

Tara Chand Shaha

APPELLANT

Vs

Harish Chandra Chuckerbutty

RESPONDENT

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**Date of Decision:** Dec. 11, 1868

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### **Judgement**

L.S. Jackson, J.

I think that the plaintiff did not give the evidence in this case which could entitle him to a verdict. He alleged that defendant had brought against him a false and malicious charge, and he, therefore, sued for damages, the facts alleged being that the defendant had laid information before the Police respecting a theft stated to have been committed in his house, which had caused the Police to search the house of the plaintiff; that on such search, property was found, which the defendant claimed as his and stated that, it had been stolen from his house; that, in fact, the property in question had been previously pledged by the defendant to the plaintiff; and that, in consequence of such pledge being established to the satisfaction of the Magistrate, plaintiff was, accordingly, discharged, and the property restored to him. If those facts had been proved in the Civil Court as alleged, there can be no doubt that the Court might have justly inferred malice, and have given plaintiff a decree. It seems that the plaintiff gave no evidence of the facts which were relied upon as raising the presumption of malice, and did not prove the previous pledge, but seems to have adduced, for the purpose of proving the principal facts, copies of the proceeding before the Magistrate in particular. Copies of the depositions of two witnesses before the Magistrate, who deposed to the pledging of those articles, were produced as evidence in the Civil Court, but the witnesses being still alive, those copies of the depositions were not admissible. Plaintiff ought to have produced those witnesses to prove the fact. Plaintiff, therefore, did not support his case by proper evidence in the Court below. We are asked by the respondent to remit the case to lower Court in order that plaintiff may have an opportunity of giving further evidence. I do not think that we ought to do so. This was a suit for damages, and the plaintiff ought to have made out his case at the trial.

2. I think that the appeal must be decreed, and the judgment of Principal Sudder Ameen must be reversed with costs.

Glover, J.

I concur.