

**(1869) 03 CAL CK 0037**

**Calcutta High Court**

**Case No:** Special Appeal No. 581 of 1868

Raja Akhaya Narayan Pal

APPELLANT

Vs

Mohammed Hossein

RESPONDENT

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**Date of Decision:** March 5, 1869

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### **Judgement**

Markby, J.

In this case the plaintiff, having borrowed money from the defendant, gave his zamindari in farm to the defendant, who was to reimburse himself from the proceeds, paying to the plaintiff Rs. 300 a year as malikana. This suit is brought to recover some arrears of that allowance. The two lower Courts, in this case, have given a decision in favour of the plaintiff, and the only ground on which we are asked to set that decision aside, is that the Civil Court has no jurisdiction to try the case.

2. The defendant objected to the jurisdiction in the first Court, but took no objection to the jurisdiction in the lower Court of appeal.

3. Without determining the question whether the Civil Court or the Revenue Court is the proper tribunal in this case, I think, that, under such circumstances, we ought not to set aside a decision which we must presume to be correct on the merits. I think that for the purpose of this appeal we ought to consider the objection to the jurisdiction as waived. Whether or no the defendant can take this objection in any other form, it is not necessary to say.

4. I think the appeal ought to be dismissed with costs.

Jackson, J.

I concur in this judgment.