

In the High Court of Judicature, Bombay.

Monday, the 13 day of March 1865.

SPECIAL APPEAL No. 1034 - of 1864.

Shamja Wulud Lakh-  
hossa of the Ahmednagar  
District — (Original Defendant) } Appellant

versus

Nathoo Wulud Anaji, and  
Bhikoo Wulud Jando of  
the Ahmednagar Dis-  
trict — (Original Plaintiffs) } Respondent

Rs. 25-0-0-

The claim in the Original Suit was to oblige the Defs to keep open a drain which he had illegally stopped

In Appeal No. 257 of 1864 the ~~Appellate Judge~~ <sup>Appellate Judge</sup> of the District of ~~Ahmednagar~~ <sup>Ahmednagar</sup> confirmed the Decree of the ~~Judge at District~~ <sup>Judge at District</sup> who had decreed for the ~~Plaintiffs~~ <sup>Plaintiffs</sup>

A Special Appeal was preferred in the High Court on the grounds that the decision of the ~~Appellate Judge~~ <sup>Appellate Judge</sup> is ~~erroneous~~ <sup>erroneous</sup> & ~~unjust~~ <sup>unjust</sup> & ~~contrary~~ <sup>contrary</sup>

to law in that

(a) The Court below had no jurisdiction in the case, it being regarding the use of a water-course.

(b) The question has been already decided by a competent tribunal, namely the Revenue authorities.

(c) There has been a mis-  
-construction of the exhibits Nos 14-13-12-11 in that the drain under the house of Appellant is said to have been mentioned therein, whereas they clearly point to a different water-course.

(d) If the drain be held to be a public drain, the opposite party has no cause of action, unless special damage has accrued to him, and no evidence of such is on the record. If, on the other hand, it be held to be a private drain, there is no evidence of either grant or of user during the period of prescription.

The Court confirm the decree of the Court below.

R. Coult  
J. L. M.

W. M. M.

