

(1889) 01 CAL CK 0001
In the Calcutta High Court

Shuttrughon Das Coomar

APPELLANT

Vs

Hokna Showtal and Others

RESPONDENT

Date of Decision : 07-01-1889

Acts Referred:

Citation : (1889) ILR (Cal) 159

Hon'ble Judges : Pigot, J;Beverley, J

Bench : Division Bench

Judgement

Pigot and Beverley, JJ.—In this case there are two conflicting decisions, and the Small Cause Court Judge has very properly referred the case to us. The question is whether an action for wrongful seizure of cattle will lie in a Civil Court. Mr. Justice Mitter and Mr. Justice Maclean, in the case of *Aslem v. Katta Durzi* 2 C.L.R. 344, have held that it would not, the remedy by Act I of 1871 being, in the opinion of both those learned Judges, the only remedy available. On the other hand, in the case of *Nomaz Mollah v. Lall Mohun Tagadgeer* 15 W.R. 279, it was held by Mr. Justice Loch and Mr. Justice Ainslie that a suit would lie, notwithstanding the provisions of Act III of 1857, the similar Act then in force. That case does not seem to have been before the learned Judges who decided the case of *Aslem v. Kalla Durzi* 2 C.L.R. 344 which was not argued. Under these circumstances, we must form our opinion by the light of those two cases, and upon such grounds as appear to us to exist; upon a consideration of the statute. The peculiar remedy for the wrongful seizure of cattle, and the special limitation provided for it, are the same as existed under Act III of 1857, referred to in the case of *Nomaz Mollah v. Loll Mohun Tagadgeer* 15 W.R. 279. Such a remedy does not, we think, exclude the ordinary remedy which a man possesses under the law. It might be, as Mr. Justice Loch points out, a hard thing that a man, who has not been able to pursue his remedy under the summary Act within ten days, should, because that Act offered him that remedy, be barred from exercising a right which existed for him before. Therefore, agreeing with the decision in the case of *Nomaz Mollah v. Lall Mohun Tagadgeer* 15 W.R. 279 we consider that this suit will well lie.