ts first order, and also that the decree-holder, Gupinath, ought to have prose cuted his remedy by a regular suit. So he reversed the order of the Moons. As the matter now stands, it appears to me that we have no choice but to affirm the order of the Judge, because the decree-holder, Gupinath, merely applied to execute his decree, on the ground that the cross-decree had been set aside, and that there was nothing to set off. To this bare statement, it appears to me that the opposite party had an amply sufficient answer in pointing to the entry of satisfaction upon the back of that decree. It is probable that if Gupinath had made an application to the Court supported by an affidavit, setting out the whole of the circumstances, showing how it happened, that notwithstanding the adjustment an appeal had proceeded, proving that his conduct in carrying on the appeal had been *bona fide* and honest, and showing that in fact the order of adjustment had been obtained by mistake and contrary to the real intention of the parties, his execution might have been allowed to proceed. But he did nothing of the sort. He simply relied on the fact that the other decree had been set aside, and on that statement merely he asked for execution of his own decree. I do not think on such a statement he ought to have been allowed to execute. I therefore think that the special appeal must be dismissed with costs.

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MARKBY, J.—I am of the same opinion.

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

RAMANATH RAKHIT AND OTHERS (PLAINTIFFS.) *v.* MUCHIRAM PARAMANIK AND OTHERS (DEFENDANTS.)*

1869 May 17

Power of Collector—Standard of Measurement—Act VI. of 1862 *B. C,. ss.* 9 & 11.

In an application for assistance to measure the land of a ryot under section 9, Act VI. of 1862, B. C., the Collector has no power under section 11 to fix with what pole the measurment is to be made, but such questions are to be reserved for after-proceedings when any action is taken upon the result of such measurement.

Baboos *Ashutosh Dhur, Bhawani Charan Dutt,* and *Prasanna Kumar Roy* for appellants.

Baboos *HemChandra Banerjee* and *Chandra Madhab Ghose* for respondents.

JACKSON, J.—IN these cases the plaintiffs, who were alleged to have recently purchased a fractional share in the Mehal Serampore, applied to the Collector, under section 9, Act X. of 1862, Bengal Council, for assistance in measuring the lands of that mehal, in which operation they alleged that they had been opposed by the ryots.

*Special Appeals, Nos. 2634 and 2635 of 1868, from a decree of the Officiating Judge of Midnapore, dated the 13th of June 1868, reversing a decree of the Deputy Collector of that district, dated the 28th April 1868.

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The ryots appeared and stated that they were perfectly willing that the lands should be measured by the current standard of measurement. The agents of the plaintiff's as well as the defendants, were examined by the Collector, and they respectively set up different standards, which they alleged to be the standard pole of measurement of the mehal in question.

The Deputy Collector who tried the case went into the question, and finding that the canoongoe papers give not one standard pole for the pergunna, but six varying standards for six hoodas, or divisions of the pergunna, as shown in the margin of the judgement, of which the standard assigned to Hooda Gugaspnt, within which the mehal in question is situate, was 9 feet and 4½ inches, whereas the survey papers give the standard as 10 feet and 6 inches for the mehal in question, he considered that the canoongoe papers were entitled to greater weight, and he ordered accordingly that the ryots should be directed to allow measurement by the standard of 9 feet 4½ inches.

The ryots appealed from this decision to a Zilla Judge, and the Zilla Judge, finding that the weight of evidence was entirely in favor of the pole of 10½ feet, as being the measuring rod in Serampore, reversed that part of the Deputy Collector's judgment, and directed that measurement should be allowed by the pole of 10½ feet.

The plaintiffs have now come to this Court in special appeal, contending for the first time that the Judge had no jurisdiction to entertain the appeal upon this point. He refers to a decision of this Court to which I was a party: *Rakhal Dass Mookerjee* v. *Tunoo Puramanick* (1).

I adhere to the opinion which I expressed in that case, that no appeal, either regular or special, is permitted on this point, namely, as to the standard of measurement. But on going further into the matter, and after a careful consideration of the sections of the Act referred to, namely sections 9, 10, and 11, I also think that the Deputy Collector had no jurisdiction to determine, in a case of this kind, what is the standard pole of measurement of the pergunna, or the standard pole by which the measurement is to be made. It now appears to me that the functions of the Collector, as well as the provisions for appeal, are strictly defined in the 9th and 10th sections of this Act, and that the direction contained in section 11 is one obligatory on the zemindars or persons making the measurement, but that it is not for the Collector to lay down *a priori*, in orders made under section 9, with what pole the measurement is to be made, but that all questions, arising out of the pole with which the zemindar may measure, must be reserved for after-proceedings when any action is taken upon the result of the measurement obtained.

It seems to me very clear that this must be so, because the authority given to the Collector in this matter, vexatious as is the nature of the proceedings, seems to be strictly limited to enabling the zemindar to carry out the power which is supposed by law to reside in all proprietors, of measuring the lands

(1) 7 W. R., 239.

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within his estate. It can matter very little to the ryot by what standard his lands may be measured, because the mere measurement does not conclude either him or the landlord as to any future question. The decision upon such a question will arise, as I have pointed out in the case cited, on such occasions as when a landlord seeks to enhance, under clause 3 section 17, Act X. of 1859; when, if demanded by the ryot, I apprehend that a fresh measurement would have to be made by order of the Court. I now think that the Legislature never intended to enable the Collector to go on and decide the further question of right which might be brought before him incidentally on such proceedings. I think therefore that the decision of the Judge, and also the decision of the Collector upon this point, must be set aside; that the order of the Collector ought to be cut down to an order allowing the zemindar to measure, and that the responsibility of measuring with the proper standard must be left entirely to the zemindar.

It seems quite clear that the one party in this matter is not more chargeable than the other with the error that has taken place. They both come into Court with the express intention of disputing the standard of measurement. That being so, they must bear alike the costs that have arisen, and therefore we shall direct that in these cases each party shall pay his own costs in all the Courts.

MARKBY, J.—I am of the same opinion.

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

NARAYANI DAYI DEBI (PETITIONER) *v.* CHANDI CHARAN CHOWDHRY AND OTHERS (OPPOSITE PARTIES.)*

1869 May 18.

Power of High Court under sec 15 of the Charter—Possession—Sale—Act VIII. of 1865, B. C.

Where a Collector, having passed an order for possession of a certain tenure in favour of the applicant on his purchase thereof at a sale for arrears, reversed such order at the instance of an objector who had already purchased the same at a sale under Act VIII. of 1865, B. C., for arrears of rent due upon it, and had been put in possession, the High Court refused to exercise its power under section 15 of the Charter.

Baboo *Shamlal Mitter* (with him Baboo *Mahendralal Seal*) moved for a *Rule Nisi* to show cause why the order of the Collector of Moorshedabad, dated 3rd April 1869, should not be set aside.

THE grounds of the application and facts of the case sufficiently appear in the judgment of the Court, which was delivered by

BAYLEY, J.—This is an application for the exercise of our extraordinary powers under section 15 of the Charter, and we are asked to grant a rule calling upon the other side to shew cause why an order of the Collector of

* Motion, No. 406.