

Raja was not the real rent of the estate. The fact has so turned out, and the defendant has not made the abatement, but has recovered the rents for the years 1271, 1272, and 1273, without making any deduction in the amount.

We are of opinion that the plaintiff is entitled to recover damages against the defendant for not making the abatement for those three years, which had not arrived at the time when the former suit was brought. The plaintiff could not, in that suit, have recovered damages in respect of those years for which he had not paid, and for which he had not at that time been called upon to pay any rent.

1868

RAJA
NILMANI
SING

v.
ANNADA-
PRASAD
MOOKERJEE

Before Sir Barnes Peacock, Kt., Chief Justice, Mr. Justice Bayley, Mr. Justice L. S. Jackson, Mr. Justice Macpherson, and Mr. Justice Mitter.

AMIRUDDIN v. JIBAN BIBI.*

Special Appeal—Act VIII. of 1859, s. 347.

1868
Aug. 8.

No appeal lies against an order rejecting an application for the re-admission of appeal under sec. 347, Act VIII. of 1859.

PLAINTIFF brought a suit for recovery of possession in the Moonsiff's Court, and obtained a decree. Defendant appealed to the Judge. But the appeal was struck off for default, on the 24th of December 1867. Within 30 days from that date, defendant made an application, under sec. 347, Act VIII. of 1859, for the restoration of his appeal. The Judge, however, rejected the application on the ground, that "no good or sufficient reason was assigned for re-admitting the appeal." Thereupon defendant preferred an appeal to the High Court. The case came on before PEACOCK, C. J., and MITTER, J., by whom it was referred to a Full Bench, with the following remarks by—

PEACOCK, C. J.—At present, I do not see that an appeal lies at all from an order rejecting an application for the

* Miscellaneous Appeal, No. 157 of 1868, from an order of the Judge of Beerbhoom, affirming an order of the Moonsiff of that district.

1868 re-admission of an appeal under section 347, Act VIII. of 1859.
 AMIRUDDIN If such an appeal lies at all, it appears to me that it must lie
 v. upon matters of fact as well as upon points of law. When the
 JIRAN BISI. regular appeal was struck off, and no decision pronounced upon
 it, I cannot see how a special appeal can lie to this Court. It
 has, however, been held in several cases that a special appeal
 does lie; see *Hara Chandra Das Chowdry v. Ram Kumar Chow-*
dry (1); *Ram Yad Jemadar v. Biscwar Bhattacharji* (2);
 and *Musst. Bibi Halu v. Must. Atwaro* (3); *Sheikh Golam*
Mohammed v. Kunjabehari Lal (4).

In the Agra Court it was held, that a special appeal would
 not lie; see also Case No. 56 of 1862, decided by the Calcutta
 Court; and other cases cited in the note to this section of
 Act VIII. of 1859, collected in the 3rd edition of Broughton's
 Civil Procedure Code.

In this state of the authorities, we think it necessary to refer
 the case for the decision of a Full Bench.

Baboo's *Bhawani Charan Dutt* and *Prasanna Kumar Roy* for
 appellant.

Baboo *Lakhi Charan Bose* for respondent.

The opinion of the Full Bench was delivered by

PEACOCK, C. J.—We think that there is no appeal against
 an order refusing to re-admit an appeal under section 347 of
 Act VIII. of 1859. The matter is left to the discretion of the
 Judge. The appeal is dismissed with costs.

(1) 2 W. R., 254.
 (2) 2 W. R., (M. R.) 23.

(3) 7 W. R., 81.
 (4) 5 W. R., (M. A.), 27.

**APPELLATE JURISDICTION
CIVIL.**