

event of the suit being dismissed or only partially decreed, to evade the jurisdiction of Act XLII. of 1860, and to secure an appeal not permitted by law.

The suit was properly a simple one for contribution, and, as such, one that would be decided by a Small Cause Court; and, as the amount claimed was under 500 rupees, no appeal lies.

We, therefore, dismiss this special appeal with costs.

The 25th May 1865.

Present :

The Hon'ble C. B. Trevor and G. Campbell,
Judges.

Execution of decree (Immoveable property in occupancy of ryot).

Case No. 2488 of 1864.

Special Appeal from a decision passed by the second Principal Sudder Ameen of Hooghly, dated the 27th May 1864, modifying a decision passed by the Moonsiff of that District, dated the 5th August 1863.

Soobhudra Dossee (Plaintiff), *Appellant,*

versus

Gooroo Dyal Singh (Defendant), *Respondent.*

Baboo Otool Chunder Mookerjee for Appellant.

Baboo Mohendro Lall Shome for Respondent.

Procedure to be followed in the execution of a decree for immoveable property in the occupancy of a ryot.

It appears that one Goluck Monee was in possession of certain property as the heir of her husband, and it is alleged by the special appellant, Soobhudra Dossee, that a mokur-

ruree pottah was granted by her to one Gholam Sufdar, who conveyed it to her son; and that, after her son's death, she was in possession of the same. After Goluck Monee's death, Banee Madhub Bhadooree and his two brothers, who were sons of her husband's brothers, succeeded to the property. Banee Madhub, it appears, conveyed the whole property to one Ram Lal, whereupon his two brothers sued for their 10 annas share of the property, making Soobhudra Dossee, the third party, defendant. Plaintiffs obtained a decree against Ram Lal, Soobhudra getting her costs. The plaintiffs then sold their rights under the decree to one Gooroo Dyal, who ousted Soobhudra from her ryotee land. She then, under section 230 of Act VIII of 1859, petitioned to have an enquiry made as to her dispossession, and the Court dismissed her claim as regards 10 annas of the property, but decreed her claim as to 5 annas of it and gave her damages in proportion. On appeal the Judge affirmed the lower Court's decree, with this exception that it rejects her claim to damages, inasmuch as Ram Lal, the owner of the 5 annas of the property, had not claimed them.

Plaintiff now appeals specially, urging that, as she admittedly was a ryot in possession, section 224, and not 230, was applicable to the matter; that she should have been retained in possession as ryot, and should not, in a suit for title, when, by her being made a defendant, her possession as tenant was admitted, be ousted by an enquiry under section 230; that consequently the Court, as she was admittedly a defendant, quash the proceedings under section 230, and direct that she be retained in possession, leaving the parties, who have obtained a decree, to bring any other suit against her that they may be inclined to bring.

We think that, on the facts of this case, the enquiry under section 230 was altogether illegal, and that plaintiff, who was sued as a ryot in possession, should have been retained in possession, and possession to the decree-holders given in the mode suggested in section 224 of Act VIII. of 1859. Under this view the whole proceedings under section 230 are quashed. The special appellant, the ryot in possession, will be retained in possession, and the decree holders obtain possession in the mode laid down in section 224 of Act VIII. of 1859, and the costs of this special appeal will be borne by special respondent.