

The 18th May 1865.

Present:

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

Jurisdiction—Suit for collections of Shrines.

Case No. 1371 of 1864.

Special Appeal from a decision passed by the Principal Sudder Ameen of Behar, dated the 12th March 1864, affirming a decision passed by the Moonsiff of that District, dated the 30th November 1863.

Sheo Suhaye Dhamee and others (Plaintiffs),
Appellants,

versus

Bhooree Muhtoon and others (Defendants),
Respondents.

Baboo Khettur Nath Bose for Appellants.

Baboo Pournoo Chunder Mookerjee for
Respondents.

* A suit will lie for the collections of a shrine, either in right of property in the place, or of lawful and established office attached to it.

RESPONDENT takes objection that a special appeal will not lie. But we find that this is not a suit on a contract, but a claim for the offerings at certain temples on the express ground of "*Mourosee Milkut*" or hereditary property. It is not a suit of a Small Cause character.

The claim has been most illegally and improperly non-suited by the Courts below—illegally, because no such procedure is known to the present law, and the plaint cannot be rejected after summoning the defendant; and, further, most improperly, because the reason given is altogether frivolous, *viz.*, that plaintiff did not state the names of the pilgrims.

A suit for fees voluntarily paid to one man will not lie on the part of another, when there is neither contract nor tangible property; but, when the parties claim the collections of a shrine, either in right of property in the place, or of lawful and established office attached to it, it is well established that the suit will lie. Plaintiff's suit would seem by his declaration to be of this character, and it must be enquired into to ascertain whether it is so or not. If it is, and plaintiff's claim

to the share alleged by him is established; if, moreover, it appears that the collections were made by defendants—then it will lie on the defendants to render to plaintiff an account, and pay him his share of the proceeds. Plaintiff cannot be called on for a nominal roll of collections which he did not make, or to give evidence of that which is not in his cognizance. The case is remanded for a proper trial.

The 19th May 1865.

Present:

The Hon'ble G. Loch and W. S. Seton-Karr,
Judges.

Limitation (Clause 14, section 1 of Act XIV. of 1859)—Resumption or assessment of Lakeraj.

Case No. 3291 of 1864.

Special Appeal from a decision passed by Mr. A. Pigou, Judge of Hooghly, dated the 8th August 1864, modifying a decision passed by Moulvie Tofel Ahmed, Moonsiff of that District, dated the 19th February 1864.

Krishto Mohun Doss Bukshee (Defendant),
Appellant,

versus

Joy Kishen Mookerjee (Plaintiff),
Respondent.

Baboo Brojendro Coomar Seal for
Appellant.

Baboos Banee Madhub Banerjee and Tarucknath Sein for Respondent.

Clause 14, section 1 of Act XIV. of 1859, applies to all suits to resume or assess lands held rent-free, whether before or after the Permanent Settlement.

THIS was a suit for resumption instituted on 23rd November 1863. The defendant pleads limitation, inasmuch as the suit is not brought within twelve years from the date on which the plaintiff's title accrued. The defendant does not distinctly quote clause 14, section 1, Act XIV. of 1859, but his words sufficiently indicate that he brings his plea under that law. In his petition of special appeal he distinctly specifies the law; and, when the suit was brought, that law was the only law of limitation in force. Section 18 of that Act provides, that all suits instituted within the period of two years