sufficient within the meaning of clause 15, section 1, Act XIV. of 1859, though made to a third party, and not to the person entitled to the land.

THIS suit, brought against a mortgagee for the recovery of the property mortgaged, is clearly barred by limitation, unless the written acknowledgment of title on which the plaintiff relies saves it. The acknowledgment is in terms a clear recognition of the plaintiff's right as mortgagor; but it is contained in a document (to which the plaintiff is not a party) whereby the mortgagee conveyed his interest in the land to a third person by way of mortgage. Act XIV. of 1859, section 1, clause 15, merely requires the acknowledgment of the title of the mortgagor or of his right of redemption to be given in writing by the mortgagee. The construction given to these words by the Court below is that they require the written acknowledgment of title to be given to the mortgagor; and that, in the present case, the acknowledgment, being in a writing passing between the mortgagee and a third person, is insufficient to prevent the operation of the Law of Limitation.

Whatever may be the requisites of an acknowledgment of a debt to revive a right of suit within the 4th section of the Act, we are of opinion that an acknowledgment of title may be sufficient within the above clause of the Act, although it is not made to the person entitled to the land.

After the prescribed period has elapsed, the mortgagor loses all remedy by suit, and the mortgagee consequently holds the land free from all rights of suit by the mortgagor. But if, before the expiration of the appointed time, the mortgagee makes known that he holds the land as a mortgagee, or, in other words, in a character incompatible with the notion that he is himself the owner, and if he makes this manifest by a writing acknowledging the title of the owner, the mortgagor, we find nothing in the law to require that such written acknowledgment should be addressed to the mortgagor. It appears to us that a public written acknowledgment of the mortgagor's title, or an acknowledgment such as that now before us, contained in a writing addressed to a third person, if signed by the mortgagee, satisfies the requirements of the law.

We reverse the decision of the lower Court, and remand the suit for trial.

The 11th May 1865.

Present:

The Hon'ble H. V. Bayley and E. Jackson, *Judges.*

Judgment of Lower Appellate Court (to record grounds of appeal and reasons for rejecting them)

Case No. 3433 of 1864.

Special Appeal from a decision passed by the Principal Sudder Ameen of Mymensingh, dated the 27th August 1864, affirming a decision passed by the Moonsiff of that District, dated the 16th December 1861.

Kishen Chunder Putronovis (one of the Defendants), *Appellant,*

versus

Tara Monee Chowdhrain (Plaintiff), *Respondent.*

Baboo Romesh Chunder Mitter for Appellant.

Baboo Bhuggobutty Churn Ghose for Respondent.

The grounds urged in a petition of appeal to a Lower Appellate Court, and the reasons for rejecting them, should be distinctly and concisely recorded by the Court.

THE only order passed in this case is in these words: "Whereas no reason is "shewn for entering this case again on the "file, it is ordered that the petition to that "effect be rejected." We think this order quite insufficient and most unsatisfactory. The grounds urged by the petitioner, and the *reasons* why these grounds are not tenable, should be distinctly and concisely recorded by the Principal Sudder Ameen. The attention of the Principal Sudder Ameen is directed to the decision of this Court, page 254, Weekly Reporter, 24th March 1865, No. 2905, special appeal from his decision, and he is enjoined to be more careful in future.

The 11th May 1865.

Present:

The Hon'ble E. Jackson and F. A. Glover, *Judges.*

Execution of decree—Suit by intervenor under section 230, Act VIII. of 1859—Transfer of land in dispute from one jurisdiction to another.

Case No. 3564 of 1864.

Special Appeal from a decision passed by the Judge of Mymensingh, dated the

12th September 1864, affirming a decision passed by the Principal Sudder Ameen of that District, dated the 25th May 1864.

Kalee Doss Neogy (Plaintiff), *Appellant,*

versus

Huronath Roy Chowdhry (Defendant), *Respondent.*

Baboos Sreenath Doss and *Romesh Chunder Mitter* for Appellant.

None for Respondent.

In a suit under section 230, Act VIII. of 1859, brought by an intervenor, the Court ought to decide, as between the intervenor and the decree-holder, the questions arising under that section, instead of dismissing the decree-holder's claim, and requiring him to take out execution of his decree, not in the district of M, but in the district of R, as the villages of which possession is claimed under the decree have, since the passing of the decree, been transferred from M to R. If, during the pendency of the execution-case, the Court is deprived of jurisdiction, the Court should not dismiss the decree-holder's claim, but transfer the record to R.

THIS was a suit which arose under section 230, Act VIII. of 1859, in execution of decree, when the respondent intervened. Both the lower Courts have decided, as between the special appellant and the respondent, not the questions which can arise under section 230, but that the plaintiff should take out execution of his decree, not in the district of Mymensingh, but in that of Rajshahye, as the villages, possession of which is claimed under the decree, have, since the passing of the decree, been transferred from Mymensingh to Rajshahye. It is quite clear that, when the application for execution was preferred to the Mymensingh Court, the jurisdiction then was with that Court. If, while the execution-case was pending, the Court was deprived of jurisdiction, the Court should not dismiss the decree-holder's claim, but should transfer the record to Rajshahye. There seems to be some doubt as to whether the decree-holder will not be barred by limitation from executing his decree in the Rajshahye district. If so, the case should have been transferred, and not dismissed, and certainly no such order could be passed in a suit under section 230 brought by an intervenor.

The lower Court's order is reversed, and the case is remanded with directions that it may be transferred to the Rajshahye Court for execution, and for determination of the questions which arise on the intervenor's objections.

The 11th May 1865.

Present:

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

Resumption of invalid Lakheraj—Amendment of plaint—Refusal of, and subsequent application for, remand.

Case No. 14 of 1864.

Regular Appeal from a decision passed by the Judge of Midnapore, dated the 8th October 1863.

Nobbo Lall Khan and another (Defendants), *Appellants,*

versus

Maharanee Odheeranee Narainee Koomaree (Plaintiff), *Respondent.*

Baboos Nobo Kishen Mookerjee and *Kalee Prosunno Dutt* for Appellants.

Mr. R. V. Doyne and *Baboo Juggadanund Mookerjee* for Respondent.

Suit laid at Rupees 21,494-14 annas 6 pie.

Suit under section 30, Regulation II. of 1819, for resumption of invalid lakheraj created since the Permanent Settlement. The plaintiff was offered time and opportunity to amend his plaint and supplement his evidence. He refused the latter, and elected to go to trial on the record as it stood, when he failed to prove that the lands in dispute were at any time part of his permanently settled estate, and the Court then refused to remand the case in order to enable him to produce further evidence.

THIS was a suit to resume certain lands held rent-free, on the allegation that they were part and parcel of the plaintiff's permanently settled estate illegally alienated and held by the defendant as lakheraj since the Permanent Settlement.

The suit was brought under section 30, Regulation II. of 1819, and the area sought to be resumed was in excess of one hundred beegahs.

After the Full Bench ruling in the cases of Sonaton Ghose and Heera Monee Dossee, and the judgment of the Divisional Bench in the case of Khelut Chunder Ghose (reported at page 258 of Sutherland's Weekly Reporter, Volume II.) in conformity with those rulings were passed, the vakeels for the plaintiff in this case were asked whether they wished to amend their plaint, and for that purpose have the case remanded to the lower Court to enable them to produce evidence that the lands in suit were separated from the zemindaree subsequent to the Permanent Settlement, and that consequently the plaintiff was entitled to recover under sec-