

The 4th June 1867.

*Present :*

The Hon'ble F. B. Kemp and F. A. Glover,  
*Judges.*

**Onus probandi—Suit to contest notice of enhancement—Section 14, Act X of 1859.**

Case Nos. 77 of 1867 under Act X of 1859.

*Special Appeal from a decision passed by the Judicial Commissioner of Gawalparah, dated the 26th July 1866, affirming a decision passed by the Deputy Commissioner of that district, dated the 17th April 1866.*

Prithee Ram Chowdhry Roy Bahadoor (Defendant), *Appellant,*

*versus*

Chidam Chunder Shaha (Plaintiff),  
*Respondent.*

*Baboo Mohinee Mohun Roy* for Appellant.

*Baboo Hem Chunder Banerjee* for Respondent.

In a suit brought by a ryot under Section 14, Act X of 1859 to contest a notice of enhancement, the *onus probandi* is on the ryot.

*Kemp, J.*—THIS was a suit brought by a ryot under the provisions of Section 14 of Act X of 1859.

It is clear that a ryot is not obliged to take the initiative in a suit of this description. He has the option of taking action by complaint of excessive demand of rent, or he may wait until a suit for recovery of arrears is brought at the enhanced rate of rent by the landlord.

In this case, the ryot went into Court, and the *onus* was on him. Confining the suit to the only ground upon which the notice under Section 13 proceeds, *viz.*, that the quantity of land held by the ryot has been proved by measurement to be greater than the quantity for which rent has hitherto been paid by him, the ryot must prove by production of his pottah, by oral evidence, or in any other way which may be in his power, that he does not hold more land than he originally held.

The zemindar is not bound to prove that there is an excess until the ryot has started his case. The Court below has thrown the *onus* on the zemindar.

We quite concur in the view taken by the Court below that the notice proceeded on one ground of the excess of area in the occupation of the ryot.

Case remanded ; the *onus* will be placed on the ryot.

The 4th June 1867.

*Present :*

The Hon'ble F. B. Kemp and F. A. Glover,  
*Judges.*

**Section 230, Act VIII of 1859—Onus probandi.**

Case No. 176 of 1867.

*Special Appeal from a decision passed by the Judge of Sylhet, dated the 23rd November 1866, reversing a decision passed by the Moonsiff of Russoolgunge, dated the 27th June 1866.*

Mahomed Ausur and others (Defendants),  
*Appellants,*

*versus*

Prokash Chunder Sha and others (Plaintiffs),  
*Respondents.*

*Baboo Woomesh Chunder Banerjee* for Appellants.

*Baboo Greesh Chunder Ghose* for Respondents.

Section 230, Act VIII of 1859 only gives an applicant the right, without instituting a separate suit, of contesting the decree-holder's right to dispossess him, but does not exempt the applicant from the *onus* of proving his case.

*Glover, J.*—THIS was an application under Section 230, Act VIII of 1859.

The plaintiff alleged that he had been dispossessed of certain land belonging to his talook by the defendant who held a decree for possession of adjoining talook.

The first Court found for the defendant. But the Judge on appeal reversed the decision holding that the plaintiff had proved his anterior possession, and that the defendant had not been able to show that the land was comprehended in his decree.

We think that this was a wrong view of the law. Section 230 prescribes that after an applicant has proved anterior possession and subsequent dispossession, and that the land was not included in the decree, &c., his application shall be treated as a suit, and shall be determined in the same manner as other suits.