whether or not the widow could have paid them off from the income. In short, the special appellant wishes to place upon the purchaser the burthen of a very distinct proof as to the necessity for the sale.

The Judge has found on the evidence adduced that the widow sold to pay her husband's debts, and that the defendant bought *bonâ fide*. There can be no question that the son would take his father's property burthened with his liabilities; and if these were cleared off by the sale of that property, or part of it, it cannot be said that such alienation was to the minor's disadvantage, or that it was one which a guardian would not have been justified in making.

But even if there were a question as to the propriety of the guardian's conduct, the mere fact of her having been able to make some more advantageous arrangement for the estate of the minor would not nullify a sale to *bonâ-fide* purchasers for value. The well-known case of Hunooman Pershad Pandey has laid it down that such a purchaser would be protected, if he had exercised due care and had made such enquiry as was open to him, and had believed in the existence of a reasonably credited necessity. The ruling has been followed by this Court in the case of a guardian. (*Vide* Radha Kishore Mookerjee *versus* Mirtunjoy Gao, 7 Weekly Reporter 23.)

And as the Judge has found as facts that there were debts due by the special appellant's father, and that the widow sold the property in order to pay off those debts, it would seem that there was such an apparent necessity as would justify the purchase. It is nowhere shown that there were any other means of paying off incumbrances, or that the widow had any income of her own sufficient for the purpose.

We think that there is no ground of special appeal in this case, and that the application should be rejected with costs.

The 3rd June 1868.

Present :

The Hon'ble G. Loch and F. A. Glover,

Judges.

Onus probandi—Possessory suit—Mokurruree lease.

Case No. 120 of 1867.

Special Appeal from a decision passed by the Judicial Commissioner of Chota Nagpore, dated the 15th June 1867, reversing a decision passed by the Assistant Commissioner of that District, dated the 14th July 1866.

Rughoonath Dobey (Plaintiff), *Appellant,*

versus

Puresh Ram Mahata (Defendant), *Respondent.*

Baboos Mohendro Lall Shome and *Kedarnath Chatterjee* for Appellant.

Baboo Mohinee Mohun Roy for Respondent.

In a suit to recover possession of land under a mokurruree lease granted to plaintiff by the zemindar (defendant, who admitted its validity) from the other defendant who had been in possession 20 years, and who also claimed a mokurruree interest—HELD that the *onus* lay with the substantive defendant to show that his lease was mokurruree.

Glover, J.—THIS was a suit to recover possession of certain lands alleged to have been granted to the plaintiff under a mokurruree lease by the zemindar defendant, but of which plaintiff had not been allowed to take possession by the other defendant, who likewise claimed a mokurruree interest.

The zemindar defendant admitted the plaintiff's right, and alleged that the mokurruree lease set up by the other defendant was false, he never having had anything beyond a terminable lease, at the expiry of which the land had been given to the plaintiff.

The substantive defendant pleaded a mokurruree lease from the year 1235 B. S.

The Court of first instance held the mokurruree pottah of the defendant to be spurious, and consequently gave plaintiff a decree; but the Judicial Commissioner considered that, as the defendant had admittedly been in possession of the land for the last 20 years, the *onus* of proving that he held on a terminable lease only was on the plaintiff, and, as he was unable to discharge it, the Judi-

cial Commissioner refused to disturb the defendant's possession.

This decision appears to us clearly wrong. The special appellant holds a mokurruree lease from the zemindar. The defendant claims to hold a similar lease. He admits the zemindar's general rights, but puts forward the special plea that those rights were barred by the grant to him of a mokurruree lease long prior to that set up by the plaintiff. Under these circumstances, the *onus* of proof was not upon the plaintiff to show that the defendant's lease was temporary, but upon the defendant to show that it was mokurruree ; and a bare possession for 20 years or more would not shift the burthen, or give the defendant a mokurruree title against his landlord, without clear proof of his right to hold at fixed rates. This is not a suit under Act X. of 1859, where a plea of holding at one and the same rate, since the settlement might be supported by the presumption arising from 20 years' continuous payment at that rate, but one in which the tenant fixes the date of his lease in a certain year.

The Judicial Commissioner observes that the defendant's possession for 20 years has been proved by the plaintiff's own witnesses, but we remark that these witnesses speak of this possession as being that of an ijaradar or farmer only, so that their evidence in no way benefits the defendant's case.

The case must go back, in order that the Judicial Commissioner may find whether or not the defendant holds his land on a valid mokurruree title from the zemindar. If he does not, the plaintiff, who is admitted by the zemindar to hold in that manner, will be entitled to take possession of the land. Costs will follow the result.

The 3rd June 1868.

Present :

The Hon'ble H. V. Bayley and W. Markby, *Judges.*

Contribution—Mode of enforcing the obligation—Limitation—Keeping alive a separate decree.

Case No. 470 of 1867.

Miscellaneous Appeal from an order passed by the Judge of Rajshahye, dated the 7th June 1867, affirming an order passed by the Principal Sudder Ameen of that District, dated the 12th January 1867.

Khema Debia and others (Decree-holders), *Appellants,*

versus

Kumola Kant Bukshee and others (Judgment-debtors), *Respondents.*

Baboo Issur Chunder Chuckerbutty for Appellants.

No one for Respondents.

Where one person jointly interested with others in land is compelled to pay Government revenue in excess of his proper share, each co-sharer is bound to refund so much as he ought himself to have paid ; and this objection is to be enforced by a suit against all the co-sharers in which the amount of their several liabilities is to be declared by the Court.

HELD that, where a decree is not a joint one against all the defendants, but a separate one as against each batch of defendants, the proceedings against one batch have no effect towards keeping alive the separate decrees against other batches.

Markby, J.—THE appellants in this case are seeking to execute a decree, dated 21st March 1863, which declares that certain of the defendants in the suit, being six in number, should pay to the plaintiff Rupees 749-0-9 ; that certain others of the defendants, being five in number, should pay to the plaintiff Rupees 91-8-2 ; that certain others of the defendants, being three in number, should pay to the plaintiff Rupees 60-8-6 ; and that the remainder of the defendants, being seven in number, should pay the sum of Rupees 280-0-9 ; in all, Rupees 1,181-5-0, which, with costs in proportion, the defendants were to pay *according to their respective shares.*

The suit was brought by one of several persons jointly interested in land against his co-sharers, the ground of his action being that he had been compelled to pay the whole Government revenue due in respect of the land, and he now sought to recover from his co-sharers that which he had paid in excess of his own proper share. The result of the suit was that he got a decree in his favor in the form stated above.

The obligation of the co-sharers in some way or other to satisfy this demand is well known, though there has been occasionally some difficulty and some misunderstanding as to the exact nature of the obligation, the mode in which it arises, and the mode in which it is to be enforced.

The mode in which the obligation arises is no longer of any importance as soon as it is ascertained what the obligation is, and the mode in which it is to be enforced ; and