

The 1st June 1868.

*Present :*

The Hon'ble J. B. Phear and C. Hobhouse,  
*Judges.*

Limitation—Construction of Section 20, Act  
XIV., 1859.

Case No. 145 of 1868.

*Miscellaneous Appeal from an order passed by the Judge of Sarun, dated the 31st December 1867, reversing an order passed by the Mqonsiff of that District, dated the 21st September 1867.*

Brojo Beharee Sahoy (Decree-holder),  
*Appellant,*

*versus*

Kewal Ram and another (Judgment-debtors),  
*Respondents.*

*Baboo Roopnath Banerjee* for Appellant.

*Baboo Tarucknath Dutt* for Respondents.

The three years "preceding the application" allowed in Section 20, Act XIV., 1859, must be accounted for by excluding the day on which the application is made.

*Phear, J.*—WE think that the application for execution is made within time. The words of Section 20, Act XIV. of 1859, are: "No process of execution shall issue, &c., unless some proceeding shall have been taken to enforce such judgment, decree, or order, or to keep the same in force within three years next preceding the application" for such execution. We think that "preceding the application" must mean preceding the date of the application for such execution, and consequently the three years must be accounted for by excluding the day on which the application was made. Now, the date of the final decree in the present case was the 9th July 1864, and this application for execution was made on the 9th July 1867; that being so, the application in this case was, in our opinion, made just within the three years. The case must, therefore, be remanded to the Lower Appellate Court with directions that it send it to the Court of first instance for execution.

The special appellant to be paid his costs in all Courts.

The 2nd June 1868.

*Present :*

The Hon'ble F. B. Kemp and E. Jackson,  
*Judges.*

Jurisdiction.

Case No. 2762 of 1867 under Act X. of 1859.

*Special Appeal from a decision passed by the Judge of Mymensingh, dated the 13th July 1867, reversing a decision passed by the Deputy Collector of that District, dated the 31st December 1866.*

Mahomed Jakee (Plaintiff), *Appellant,*

*versus*

Gopee Roy and others (Defendants),  
*Respondents.*

*Baboo Shushee Bhoosun Bose* for Appellant.

*Mr. J. S. Rochfort* for Respondents.

In a suit brought under Clause 6, Section 28, Act X. of 1859, setting forth that plaintiff had been ousted from his homestead, and his crops had been plundered by his lessors in concert with their co-trespassers whom they had located on the lands, it was held that the suit was substantially against the tenants in possession, their lessors having been joined in the suit, and that the Collector had no jurisdiction.

*Kemp, J.*—THIS was a suit brought under Clause 6, Section 23, Act X. of 1859.

The plaint sets forth that the plaintiff, the tenant, was ousted from his homestead, and that his crops were plundered by his lessors (khas mehal lessees), acting in concert with their co-trespassers, whom they (the lessees) had located on the lands, and who are admittedly in possession.

The Lower Appellate Court has dismissed the plaintiff's suit on the ground that the Revenue Court had no jurisdiction. A decision published at page 20, Act X. Rulings, Weekly Reporter, Volume VI., was quoted by the Judge in support of his judgment.

In special appeal it is contended that the decision relied upon by the Judge does not apply to the present suit, and that the Judge

has misconstrued the plaint, which does not (the special appellant contends) state that the tenant was ousted by the landlord in conjunction with other individuals, but through the landlord's instrumentality alone.

We think that the suit is substantially one against the tenants who are in possession, their lessors having been joined in the suit.

If the plaintiff sued the lessors alone, his suit would be cognizable by the Collector alone, but he could not recover possession as against the tenants in possession under the Collector's decree. The full remedy can only be obtained by bringing a suit in the Civil Court against the dispossessing ryots joining the lessors as defendants.

The Collector has no jurisdiction as against all the parties in this suit, and it would encourage a splitting-up of causes of action, and tend to multiply suits, were we to hold that the plaintiff could proceed against the lessors in one suit under Act X. and against the joint-trespassers, the ryots, in another suit in the Civil Court.

The appeal is dismissed with costs and interest.

The 2nd June 1868.

*Present:*

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

**Jurisdiction—High Court's powers under Section 35, Act XXIII. of 1861, and Section 15 of 24 and 25 Vic., Cap. 104.**

*Lowazima Special Appeal from a decision passed by the Collector of East Burdwan, dated the 31st March 1868, reversing a decision passed by the Deputy Collector of that District, dated the 28th January 1868.*

Drobo Moyee Dabee (Plaintiff), *Appellant,*  
*versus*

Bipin Mundul and another (Defendants), and another (Intervenor), *Respondents.*

*Baboo Kishen Succa Mookerjee for Appellant.*

No one for Respondents.

Where a respondent in a Collector's Court applied in special appeal to the High Court to exercise the general powers of supervision vested in it by Section 35, Act XXIII. of 1861, and Section 15 of 24 and 25 Vic., Cap. 104, to set aside the Collector's proceedings as without jurisdiction, it was held that, as he had allowed the appeal to be heard without objection, he was not entitled to the relief sought.

*Markby, J.*—THIS application must be refused. The applicant, who was respondent in the Collector's Court, allowed the appeal to be heard without objection. He now asks this Court to exercise the general powers of superintendence vested in it by Section 35 of Act XXIII. of 1861 and Section 15 of 24 and 25 Vic., Cap. 104, and to set aside the proceedings before the Collector as being without jurisdiction. Assuming them to have been so, still we think we ought not to interfere. The applicant took his chance of a decision in his favor in the Court of the Collector, without in any way protesting against the jurisdiction. And though his conduct in this respect will not give that Court jurisdiction, still it is, in our opinion, sufficient to prevent him coming before this Court, and asking it to exercise its extraordinary powers of relief in his favor, by setting aside proceedings of which he was willing enough to avail himself so long as there was a chance of their turning out to his own advantage. We think the decree of the Collector ought not to be set aside in order to relieve the petitioner. Upon the question whether or not it is a valid and binding decree, we express no opinion.

The 3rd June 1868.

*Present:*

The Hon'ble Sir Barnes Peacock, *Kt., Chief Justice,* and the Hon'ble Dwarkanath Mitter, *Judge.*

**Res adjudicata—Section 2, Act VIII., and Section 25, Act X. of 1859.**

Case No. 2738 of 1867.

*Special Appeal from a decision passed by the Judge of Chittagong, dated the 20th July 1867, affirming a decision passed by the Moonsiff of that District, dated the 19th February 1867.*

Gocool Chunder and others (Plaintiffs),  
*Appellants,*

*versus*

Ali Mahomed (Defendant), *Respondent.*