

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