

under the provisions of the lease, it is a suit only cognizable by the Civil Court. He has, therefore, dismissed the claim.

We think that the Collector has taken an erroneous view of the nature of the claim. He has treated it as if it were similar to other stipulations in the kubooleut, such as damages for trees wantonly destroyed, supply of 1,000 mangoes yearly; and he has considered that all these items can only be disposed of by a regular suit, and that it was never contemplated that they should be brought before the Revenue Court in summary suits, each item requiring judicial enquiry.

It is necessary to point out to the Collector the difference in these items. The stipulation for damages on account of wanton destruction of trees could not be claimed as rent, and could not, therefore, be sued for in the Revenue Court. The supply of 1,000 mangoes yearly is clearly part of the rent paid in kind, the rest in cash, and the value of them is clearly realizable as part of rent in the Revenue Court.

Further, the Collector is wrong in considering suits for rent under Act X. of 1859 to be summary suits. They are not summary suits, but they are, to all intents and purposes, regular suits only tried by the Collectors, and not by the Civil Court; and, therefore, there can be no doubt that every point on which the parties are at issue which comes before the Collector does involve judicial enquiry.

Then, with regard to the particular item which is claimed in the present case, we think that it is clearly a part of the rent, and may be sued for as rent. The defendant agreed to pay a certain fixed sum, and knowing that higher rents might be realized from the tenantry, he agreed with the plaintiff that, if permitted to enhance the rents, he would, in addition to the sum already entered in his kubooleut, pay to him half of whatever should be realized from the tenants. He was bound to render an account every year to the plaintiff; and on looking at the accounts, if anything were in balance, whether part of the fixed rent as stipulated in the kubooleut or part of the enhanced rent, and were not paid up, we see no reason why plaintiff should be debarred from suing for such sum in the Collector's Court as arrears of rent. The case in V. Weekly Reporter, page 34, Act X. Rulings, is very much in point. In that the dur-putneedar agreed, in addition to his rent, to realize and to pay to the putneedar the arrears of the rent then due by the ryots to the putneedar; and it was held by

this Court that the putneedar could sue for such rent realized by the dur-putneedar in the Revenue Court.

It has been attempted by the pleader for the respondent to show that half of the enhanced rents which were to remain in the hands of the defendant must be considered merely as remuneration for the trouble that he took in measuring the lands and enhancing the rents, but this is a mistaken view; but whatever it may be, it certainly did not in any way alter the character of that money which was to be paid to the zemindar. A Full Bench decision, reported in X. Weekly Reporter, page 41, has been quoted by the respondent to show that a case of the nature before us is cognizable by the Civil Court. That case is entirely at variance with, and is by no means applicable to, the present case. We think the suit is one for rent, and is triable by the Revenue Court; but as there is no sufficient evidence to dispose of this case, we therefore remand the case to the Collector that evidence may be called for, and the case disposed of on the merits.

With regard to the rent of 1271, we concur with the opinion expressed by the Collector that the claim for the rent of 1271 is barred by limitation. The costs of this appeal will follow the ultimate result of the case.

The 5th January 1869.

Present :

The Hon'ble H. V. Bayley and C. Hobhouse, *Judges.*

Execution—Proceedings to keep alive a decree.

Case No. 444 of 1868.

Miscellaneous Appeal from an order passed by the Additional Judge of Chittagong, dated the 6th August 1868, reversing an order of the Moonsiff of Howlah, dated the 30th March 1867.

Ram Soondur and another (Decree-holders),
Appellants,

versus

Ram Kanto and another (Judgment-debtors),
Respondents.

Baboo Okhil Chunder Sein for Appellants.

Baboo Bama Churn Banerjee for
Respondents.

Plaintiff, as decree-holder, applied for execution, and the property attached was sold. Intermediately, another