take evidence) as to what damages (if any) have been sustained by the plaintiff, by reason of the carrying out of the order of the Deputy Magistrate. The first point to be ascertained is, to what extent the *bund* was in fact cut by order of the Deputy Magistrate: then the Court must decide to what extent the destruction of the whole *bund* was the necessary or natural consequence of the *bund* being cut as it was: finally, the actual loss (if any) sustained by the loss of the water must be ascertained. The Deputy Magistrate is not responsible for any loss save that which was the necessary or natural and proximate result of the execution of the order which he passed.

I think the plaintiff (appellant) is entitled to the costs of this appeal, and to his costs as against the Deputy Magistrate and the Government in both the Lower Courts.

Jackson, J.—I entirely concur in this judgment.

The 6th January 1870.

Present:

The Hon'ble J. P. Norman and E. Jackson, *Judges.*

Ejectment—Jurisdiction—Clause 6, Section 23, Act X of 1859.

Case No. 1452 of 1869 under Act X of 1859.

Special Appeal from a decision passed by the Judge of Bhaugulpore, dated the 25th February 1869, *affirming a decision of the Deputy Collector of that district, dated the* 14*th October* 1868.

Pundit Sheo Prokash Misser and others (Defendants), *Appellants,*

versus

Fukeer Roy (Plaintiff), *Respondent.*

Baboo Tarucknath Sein for Appellants.

Baboo Debendro Narain Bose for Respondent.

The ownership of a zemindary having changed hands under a decree, a ryot with a right of occupancy brought a suit in a Revenue Court on the ground of illegal dispossession by the new zemindars.

HELD, that the suit was maintainable under Clause 6, Section 23, Act X, 1859.

Norman, J.—THE facts of the case are very simple. The plaintiff is a ryot who for many years, in fact no less than 15, has been in possession of 16 beegahs of land. He appears to have fomerly paid his rent to Jhoomuck Singh and others, zemindars of a mouzah called Bhowa nundpore. The title to this land being in dispute in September 1868, Pundit Sheo Prokash Misser and others, zemindars of Siswa, under a decree got possession of plaintiff's amongst other land as belonging to their village of Siswa. The plaintiff brings this suit under Clause 6, Section 23, Act X of 1859, complaining that he has been illegally dispossessed by Pundit Sheo Prokash Misser and other zemindars of Siswa, who illegally cut down and ploughed up his crops.

The Judge of Bhaugulpore, affirming the decision of the Deputy Collector, made a decree declaring that the plaintiff was entitled to be restored to possession.

It is objected on special appeal, that the relation on landlord and tenant did not exist between the defendant and the plaintiff, and therefore that the suit ought to have been instituted in the Civil Court, and not under Clause 6, Section 23 of Act X of 1859.

We think that there is no ground for that contention, and that the decision of the Lower Courts is correct.

It is plain that the plaintiff had a right of occupancy. That right was not affected by the change in the ownership of the zemin-

dary on the rcovery of possession by the defendant Sheo Prokash under the decree in his favor adjudging the lands to him as part of his mouzah Siswa. From the time when the defendant Sheo Prokash Misser was put into possession of the land as part of his mouzah Siswa, he became *entitled* to collect and *receive rent* from the plaintiff as a tenant having a right of occupancy in the land adjudged to him (defendant), and therefore he was a person against whom a suit could be maintained under Clause 6, Section 23, Act X of 1859.

We affirm the decision of the Lower Court and dismiss the appeal with costs.

The 6th January 1870.

Present :

The Hon'ble H. V. Bayley and Sir Charles Hobhouse, *Bart.*, *Judges.*

Possessory suit—Title.

Case No. 2243 of 1869 under Act X of 1859.

Special Appeal from a decision passed by the Officiating Judge of Rungpore, dated the 18th June 1869, *affirming a decision of the Deputy Collector of that district, dated the 15th February* 1869.

Joheerooddeen Mahomed (Defendant), *Appellant,*

versus

Dabee Pershad Singh (Plaintiff), *Respondent.*

Baboos Sreenath Doss, Issur Chunder Chuckerbutty and *Kishen Dyal Roy* for Appellant.

Mr. C. Gregory and *Baboo Kishen Succa Mookerjee* for Respondent.

In a suit to recover possession on the allegation that plaintiff had been illegally ousted though holding under a lease from defendant, the latter urged that though plaintiff had been allowed to hold the tenure as a *tehsildar* or collector of rents, he had never been the *ijaradar* or farmer in possession. The Judge found that the estate was really let out in ijara to the plaintiff by the defendant who had recovered rents and granted him receipts on account of the ijara mehal.

HELD, that this was a complete finding in favor of plaintiff's title, and that it was not necessary for him to sue for the pottah which had been wrongfully denied him by defendant.

Hobhouse, J.—IN this case the plaintiff alleged that he was an ijaradar of the defendant under a lease from 1274 to 1279, and that in Magh 1274 the defendants, zemindars, had illegally ousted him of his lease, and he therefore sued to recover possession.

The defendants stated that there had been some talk of such lease, but that the plaintiff had neglected to perform his part of the contract of the lease, and that though, therefore, the plaintiff had been permitted to hold the tenure in question as a tehsildar or collector of rents for them (defendants), yet he never had been the farmer in possession such as he alleged that he was.

In this state of the allegations on either side, the Judge has found as a fact that it has been clearly proved by the evidence of witnesses, some of whom were cited as such by both parties, that the mehal in question was really let out in ijara to the plaintiff, and that the defendant had treated the plaintiff as an ijaradar by recovery of rents from him and granting receipts to him for payments as on account of the ijara mehal, and the Judge, therefore, gave the plaintiff a decree for possession.

In special appeal, it is urged that when the plaintiff, in the words of the pleader for the special appellant, comes in on the allegation that he was to have a pottah for the tenure, and when he cannot produce it, then he has no title to the tenure, but he must first sue for specific performance of his contract, or, if he does not like that, he must sue for damages.

In support of this proposition, laid down as a proposition of law, we have no precedents cited to us except one to be found at Volume II, page 434, Hay's Reports. In the case there cited, it appears to have been held that where a plaintiff, in a case similar to this, sued for possession, he was bound, before he could obtain such possession, to establish his title.

We are quite of opinion that the law is so, and applying it to this case, we think that