by other bankers. This undoubtedly led to a bad feeling towards the plaintiffs on the part of the defendants. It is to my mind highly improbable that the defendants were not fully aware of the fact that their debtor Puleet Ram was not a partner in the plaintiffs' firm.

After the attachment of the plaintiffs' property and the consequent total stoppage of their business, they repeatedly moved the Court to decide summarily the question of partnership or no partnership, and appealed to their books, which they affirmed were under custody of the Nazir, as a test. The defendants, instead of courting such an enquiry, did all in their power to shirk it. I firmly believe that the books of the plaintiffs' firm were attached. The number is given with suspicious accuracy in the petition applying for the attachment. I further entirely concur with Mr. Justice Glover that it is not at all likely the plaintiffs would have ventured to invoke the aid of the Court in the earnest way they did for the production of those books, upon which alone they relied as a test of the truth of their averments that Puleet Ram was not their partner, had those books not been in the custody of the Nazir, and I discredit the Nazir's testimony on this point.

Taking, therefore, into consideration the malicious conduct of the defendants, their persistent opposition to any thing like a speedy and cheap process of enquiry into the question at issue between the parties, with the loss in money and credit which the plaintiffs undoubtedly sustained by the total stoppage of their business for a period of six months, I do not think that a sum of 10,000 rupees is any thing more than what this Court ought to award in maintaining the salutary principle that they who wantonly and recklessly misuse the process of the Court are responsible for that misuse.

The 5th January 1870.

Present :

The Hon'ble L. S. Jackson and W. Markby. *Judges*

Execution.

Case No. 419 of 1869.

Miscellaneous Appeal from an order passed by the Judge of West Burdwan, dated the 18th August 1869, *reversing an order of the Moonsiff of Bistopore, dated the 16th June* 1869.

Radha Kisto Panjah (Judgment-debtrr), *Appellant,*

versus

Bama Soonduree Dassia (Decree-holder), *Respondent.*

Baboo Mohinee Mohun Roy for Appellant

Baboo Bhowanee Churn Dutt for Respondent.

In a suit for possession of certain plots of land, where plaintiff appeared to be in exclusive possession of other lands devolving by the same title, the Monsiff compelled the plaintiff to alter her claim into one for a third of the whole of the lands in which she was entitled to a share, and gave her a decree, accordingly. When she sought to execute the decree, the defendant objected that she ought first to execute it in respect of the lands in her possession which were alleged to exceed the one-third decteed.

HELD, that the decree-holder was entitled to execute her decree in respect of the lands in the hands of the defendant.

Jackson, J.—IN this case the decree-holder Bama Soonduree, sued the defendants for possession of one-third of certain plote of land. It appeared that the plaintiff was in exculsive possession of certain other lands, whch devolved by the same title as the lands mentioned in the suit ; and for some reason or other, the Moonsiff compelled the plaintiff to alter the form of her plaint, and to convert the suit into a suit for a third of the whole of the lands in which she was entitled so to share, and the decree accordingly gave a third share of the whole of such lands.

The plaintiff, now seeking to execute her decree in respect of one-third share of the lands fn the hands of the defendant, the defndant objected that she ought first to evecnte the decree in respect of the lands which were in her possession, and which

it is said, actually exceed the entire one-third to which she is entitled. The effect of this contention, of course, would be that the plaintiff would take nothing by her decree at all, but, apparently, would be in a worse position than she was before her suit. It seems to me that we have nothing to do with the results which may flow from the terms of the decree in respect of the lands previously in the plaintiff's hands, but that she must be entitled to execute her decree in respect of the lands in the hands of the defendant, taking, of course, any consequence that may seem to flow from the terms of her decree. It appears to me, therefore, that the decision of the Court below in regard to the execution must so far be affirmed, namely, that the plaintiff is entitled to go on with her execution. The special appeal must be dismissed with costs

Markby, J.—I concur.

The 5th June 1870.

Present :

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

Appeal—Issues.

Case No. 133 of 1869.

Regular Appeal from a decision passed by the Subordinate Judge of Bhaugulpore, dated the 23rd March 1869.

Tekait Doorga Pershad Singh and others (Defendants), *Appellants,*

versus

Mussamut Doorga Koonwaree (Plaintiff), *Respondent.*

Baboos Onookool Chunder Mookerjee and *Chunder Madhub Ghose* for Appellants.

Baboo Unnoda Pershad Banerjee for Respondent.

In a suit by a Hindoo widow for possession and declaration of title : HELD, that defendant could not be allowed to come in and urge for the first time in appeal that by a familly custom or *koolachar* females were excluded from inheriting.

Norman, J.—THIS was a suit by the plaintiff, Mussamut Doorga Koonwaree, for possession of two-thirds and a declaration of title to the other one-third of a zemindary mehal called Chakaye in Zillah Monghyr. Her title is a very plain one.

Tekait Futteh Narain Singh died on the 14th of Chyet 1270, leaving three widows, Lulleet Koonwaree, Narain Koonwaree, and Doorga Koonwaree Doorga Koonwaree, the plaintiff, was pregnant at the time of her husband's death, and in the month of Sowun 1270 gave birth to a son Goorda Narain, who lived till Chyet 1272. On the death of Goorda Narain, who, of course, on his birth succeeded to the property in the entire mehal Chakaye as heir of his father, the plaintiff, as his mother and heiress, became entitled to the entirety of the mehal. She has been kept or been put out of possession of two-thirds by the other two widows of her husband, with one of whom at least, Lulleet Koonwaree, the appellant Doorga Pershad Singh, who is the third defendant in this case, appears to have colluded.

Doorga Pershad Singh stands to the late proprietor, Goorda Narain, in the relation of great-grand-father's brother's great-grand-son, and it may be that after the death of the plaintiff he will be entitled as next heir to the property ; to which, according to ordinary Hindoo Law, the plaintiff in entitled as mother and heiress of Goorda Narain during her life-time.

By his written statement, the appellant Goorda Pershad Singh first of all set up that the plaintiff was not in possession even of the one-third share which she does not claim. He goes on to say that the plaintiff was not entitled to the estate which had belonged to her son, because the widows and minor son lived in commensality and as a joint family with him ; that the entire property was ancestral ; and that under the Mitakshara, after the death of the plaintiff's husband and of her son, he, Doorga Pershad, was entitled to the ancestral estate. Next he sets up a title that he, Doorga Pershad, with the consent of the three wives of Futteh Narain, being rightfully entitled, was installed as rightful heir by being marked with the *teeka* in 1274. Further, he says that the plaintiff had gone away from her husband's house with one Ahlad Panday, and was livig an unchaste life.

We proceed to consider the four defences which he sets up. He does not attempt to show that the plaintiff was not in possession of one-third of the property.

As to the second, the Subordinate Judge finds that the parties were not in possession of the estate as a joint family estate. In fact, it is clearly proved that this ghatwalee estate descended from the father to the eldest son, and was not held jointly, the