the bond, and Banee Madhub knows it. In either case, there is no ground for absolving Tara Chand from liability. When a suit is brought against two persons, it is quite competent to the Court to raise an issue whether one of them is solely liable, and on finding that one only is liable to pass a separate decree against that person.

We see no ground for disturbing the decree of the Lower Courts in the present case, and we affirm that decree with costs.

It is suggested that there is some mistake in the calculation of interest for one year; if that be so, the parties agree to have that matter set right by the Lower Appellate Court.

Mookerjee, J.—I concur.

The 20th January 1871.

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges.*

Hindoo Law— ession.

Case No

Special Appeal from ion passed by the Judge of Bhaugulpore, dated the 14th June 1870, affirming a decision of the Subordinate Judge of that District, dated the 28th June 1869.

Brojo Mohun Thakoor and another (Plaintiffs), *Appellants,*

versus

Gouree Pershad Chowdhry and others (Defendants), *Respondents.*

The Advocate-General (Cowie) and *Mr. R. E. Twidale* for Appellants.

Baboos Romesh Chunder Mitter and *Abinash Chunder Banerjee* for Respondents.

Under the Mitakshara, a nephew succeeds, not as the heir of his father, but as the direct heir of his uncle.

Mitter, J.—THERE is no ground for this special appeal. It is admitted on both sides that the property, one-half of which is now in dispute, belonged to Sobhun Singh.

The defendants contend that their vendors, Kirt Narain and Gribur Dharee, who were the brother's sons of Sobhun Singh, were entitled to the whole of the estate left by the latter as his nearest heirs under the Hindoo Law.

The plaintiffs, who are the purchasers of a 4-annas share of the property from the grandsons of Oudun Singh, contend that their vendors, *viz.*, the grandsons of Oudun Singh, were entitled to participate in that property to the extent of one-half under the ekrarnamah, bearing date the 20th August 1829. This ekrarnamah was executed between Bissonath Singh and Oudun Singh. But it is quite clear that the right of inheritance set up by the defendants was not derived through Bissonath, and therefore no agreement which Bissonath might have entered into with Oudun Singh for the division of the property left by Sobhun Singh after his death can be binding against the defendants, who claim through the sons of Bissonath. A nephew succeeds under the Mitakshara, not as the heir of his father, but as the direct heir of his uncle; and thus the vendors of the defendants are clearly entitled to the entire estate left by Sobhun Singh, notwithstanding the ekrarnamah executed by their father Bissonath in favor of Oudun and his heirs.

We dismiss the special appeal with costs.

The 20th January 187

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges.*

Section 230, Act VIII., 1859—Possession.

Case No. 1813 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Purneah, dated the 26th May 1870, affirming a decision of the Moonsiff of that District, dated the 25th February 1870.

Bhyrub Sircar and another (two of the Defendants), *Appellants,*

versus

Sham Manjee (Plaintiff), *Respondent.*

Baboo Anund Gopal Paleet for Appellants.

Mr. C. Gregory for Respondent.

Possession by receipt and enjoyment of rent is as good in law as actual occupation, and Section 230, Act VIII. of 1859, is not restricted to cases of personal occupation.

Mitter, J.—THERE is no ground for this special appeal. Both the Courts have concurrently found that the transaction relied upon by the appellant is a collusive one.

It is urged that the Lower Appellate Court has expressed no opinion on the depositions of the witnesses produced by the appellant. But there is no force in this objection. There is nothing to show that the Lower Appellate Court did not go through all the evidence on the record, or at least through that portion of it on which the appellant intended to rely.

The next objection is that the Lower Appellate Court was wrong in acting under the provisions of Section 230 of the Code of Civil Procedure, inasmuch as the plaintiff was not in actual possession of the property in dispute. But the Courts have found that the person in actual occupation, namely, Boodhie Singh, was a tenant of the plaintiff, and that the plaintiff had been in the receipt and enjoyment of rent through him. Possession by receipt and enjoyment of rent is as good in law as actual occupation, and we do not see any reason why we should hold that the provisions of Section 230 apply to those cases only in which the party seeking for relief under that Section was in personal occupation.

We see no reason to interfere with the judgment of the Lower Appellate Court, and we, therefore, dismiss this appeal with costs.

The 20th January 1871.

Present:

The Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges.*

Rent-suit—Excess area—Notice—Section 13, Act X., 1859.

Case No. 1591 of 1870 under Act X. of 1859.

Special Appeal from a decision passed by the Judge of Bhaugulpore, dated the 7th May 1870, reversing a decision of the Deputy Collector of Monghyr, dated the 30th November 1869.

Thekmee Beldar (Defendant), *Appellant,*

versus

Ram Kishen Lall (Plaintiff), *Respondent.*

Moonshee Mahomed Yusuf for Appellant.

Mr. R. E. Twidale for Respondent.

A suit for arrears of rent of a quantity of land alleged to have been held by defendant over and above the quantity covered by his pottah was held to be in substance a suit for rent at an enhanced rate requiring the issue of a notice under Section 13, Act X. of 1859.

The objection that no notice had been served, though not taken in the Court below, was allowed in special appeal, inasmuch as the suit had infringed provisions of law which were not mere matters of form, but substantial protection to the ryot for whose benefit Act X. was enacted.

Bayley, J.—I am of opinion that the plaintiff's suit in this case must be dismissed, although not for the same reasons upon which the first Court has proceeded.

The plaintiff sued for the rent of 20 beegahs and odd cottahs of land for the years 1274, 1275, and 1276 on the allegation that the defendant obtained from him a pottah for 142 beegahs and 13 cottahs, but that over and above that quantity he actually held and occupied the said 20 beegahs in excess, and therefore was liable to pay the increased rent claimed.

The defendant averred that there was no excess of land whatever, and added, apparently by way of challenge, and not as an admission or waiver, that, if it were proved that he was in occupation of the excess lands stated by plaintiff, he was ready to pay the same rent for them as he did for the other lands.

Now, in the first place, in a suit like this, which was, in substance, a suit for rent at enhanced rate on the ground of excess area, the service of a notice before suit was necessary by Section 13, Act X. of 1859. The terms of Section 13 are: "No ryot or under-tenant, &c., shall be liable to pay any higher rent than the rent payable for the previous year, unless a written notice *shall* have been served," &c., &c.

Now, in this case it is admitted that no notice was served on the defendant. It follows, therefore, that under the law the defendant is not liable to pay the enhanced rate that the plaintiff has claimed. It was