

consists. No authority whatever has been shown to us on the other side; and it seems to me that those decisions are substantially in conformity with the Hindoo Law. I think, therefore, that in regard to those properties the plaintiffs were clearly entitled to a decree.

In regard to the second class, namely, the property which Chunderbutty purchased from the profits of her husband's estate, and which she appears to have bestowed upon her daughter and daughter's daughter, the case is otherwise. The widow was allowed, under the deeds which conveyed the property to her, to enjoy it for her lifetime, and incur all needful expenses. Now, it seems to me that, under the discretion so vested in her, she would be quite at liberty to invest, for the benefit of her daughter and granddaughter, sums of money in the purchase of property for their maintenance; and in that way she seems to me to have clearly understood and to have acknowledged the distinction between money so expended and money which really remained in her hands, although the form of it was changed by its being invested in immoveable property. As regards the properties numbered 15, 16, and 17, therefore, the decision of the Court below should, I think, be affirmed.

As regards the properties numbered from 21 to 30, these appear to follow the same principle as that laid down in regard to the first class of property, and the plaintiff will, therefore, be entitled to a decree for the moveable property; but as no evidence has been laid before us as to the value of this property, we feel unable to come to any conclusion as to what award should be made in respect of that property. All we can do is to declare that the plaintiffs are entitled to recover the moveable property left by Chunderbutty, which she acquired directly from Oodun Thakoor, or purchased out of the proceeds of his estate.

Then as to the fourth class of properties numbered 20 and 31 to 34, these also appear to follow the same rule, that is to say, the rule applicable to property representing either ancestral property or improvement of such property, or alteration or improvement made out of the ancestral funds, which must go to the heirs of Gireedharee, and not to the defendant, who is the daughter's daughter of Chunderbutty.

It appears that no evidence was given to show that these properties stand in the name

of the defendant or her mother, and I understand also that no evidence was given to show from what sources these properties were acquired. That, therefore, is an additional reason for allowing the plaintiff's claim in respect of them. Our order, therefore, in this appeal will be that the order of the Lower Court, except as to the properties numbered 15, 16, and 17, will be reversed, and that the parties will pay and receive costs in the Lower Court in proportion to the value of the properties decreed and disallowed; and in this Court the plaintiffs, appellants, will recover the costs of the appeal from the defendants, excepting only the costs of that portion of the property in respect of which no specific decree has been given, the respondents paying their own costs of this Court.

Ainslie, J.—I concur.

The 20th January 1871.

Present:

The Hon'ble F. B. Kemp and F. A. Glover,
Judges.

**Bond-suit—Decree for land—Section 27, Act
XXIII. of 1861.**

Case No. 326 of 1870.

Miscellaneous Appeal from an order passed by the Officiating Judge of East Burdwan, dated the 12th July 1870, reversing an order of the Moonsiff of Pothna, dated the 10th January 1870.

Talun Bibee (Judgment-debtor), *Appellant,*

versus

Tenoo Bibee (Decree-holder), *Respondent.*

Baboo Romanath Bose for Appellant.

Baboo Kishan Succa Mookerjee for Respondent.

Where the original suit was for money on a bond under 500 rupees, it was held that the fact of its having been decided on a solehnamah (which was embodied in the decree), whereby the judgment-debtor gave to his creditor land in lieu of money, did not change the nature of the suit with reference to Section 27, Act XXIII. of 1861, or make it open to special appeal.

Glover, J.—THE decree-holder sued the judgment-debtor for money due on a bond, and the case was decided on a solehnamah executed between the parties, whereby the judgment-debtor gave to his creditor $1\frac{1}{2}$ beegahs of land in lieu of the money due. The decree-holder afterwards took proceedings to recover, when the judgment-debtor contended that the decree could not be executed for money, because the money-claim had been by consent altered into one for land.

The Judge in appeal held that the solehnamah could be executed for recovery of the money, inasmuch as it was embodied in a decree of Court, and he referred in support of his decision to the case of Chunder Narain Ghose *versus* Gourree Nath Bose, reported in Volume IV., Weekly Reporter, Small Cause Court References, page 7. The judgment-debtor appeals specially against this decision. A preliminary objection, however, is taken by the decree-holder to the effect that this suit was originally one of a nature cognizable by the Small Cause Courts, and that, therefore, no special appeal lies. Against this view it is contended that, although the original suit was for money on a bond under 500 rupees, the decree gave the creditor authority to take possession of $1\frac{1}{2}$ beegahs of land, that the nature of the suit was thereby changed, and was no longer one cognizable by a Small Cause Court. The original suit was one for money on a bond for a less sum than 500 rupees; and the mere fact of the decree giving certain lands instead of that money did not change the *nature* of the suit.

Section 27, Act XXIII. of 1861, lays down that no special appeal will lie in any suit of a nature cognizable by the Small Cause Courts, and in this instance the nature of the suit remained from first to last the same. We, therefore, think that the preliminary objection is good, and that the special appeal must be dismissed with costs.

The 20th January, 1871.

Present :

The Hon'ble F. B. Kemp and F. A. Glover,
Judges.

**Execution—Payments out of Court—Section
266, Act VIII., 1859.**

Case No. 345 of 1870.

*Miscellaneous Appeal from an order passed
by the Officiating Judge of East Burd-
wan, dated the 29th July 1870, reversing
an order of the Moonsiff of that District,
dated the 30th April 1870.*

Juggut Mohinee Dossee (Decree-holder),
Appellant,

versus

Madhub Chunder Kur (Judgment-debtor),
Respondent.

*Baboos Chunder Madhub Ghose and Mo-
hendro Lall Seal for Appellant.*

Baboo Nuleet Chunder Sein for Respondent.

Payments out of Court may be certified to the Court and proved by the decree-holder in order to avoid the action of the law of limitation, notwithstanding the provisions of Section 266, Act VIII. of 1859.

Kemp, J.—IN this case, the decree-holder is the special appellant. He sues to execute his decree, but in the application to execute the Column which ought to contain the date of the decree is left blank. We are, however, informed that this was a decree in a suit for arrears of rent in a Moonsiff's Court, and it, therefore, must have been a suit which was pending before Act X. of 1859 came into operation. The decree-holder alleged that, in Falgoun 1270, the judgment-debtor, after receiving credit for certain deductions on the amount due by him, executed an instalment-bond for the balance due payable by yearly instalments ranging from the year 1270 to the year 1280; that the judgment-debtor continued to pay the instalments as they fell due up to the year 1273; that the last payment was made on the 24th Bysack 1274, and as the application for execution is within three years from that date, or in Magh 1276, it is, therefore, in time.