the score, that, unless he did so, his own share might be jeopardized—Volume XII., Weekly Reporter, page 468.

On the third ground, though we do not think the plaintiff in this suit is concluded by the decision of the revenue authorities, there can be no doubt that the adverse finding of the Revenue Court is a strong piece of evidence against the truth of the plaintiff's claim.

We take the fourth and fifth grounds together. It is clear from the dakhilas which Baboo Hem Chunder Banerjee, in the course of the argument, submitted to our consideration, and which are not disputed, that the defendant has paid more than the rent due on account of his 4-annas share. The plaintiff has failed to prove the barrat, or assignment authorizing him, as he alleges, to make payments to the zemindar on account of defendant's share in the putnee and in excess of plaintiff's own share; and it is further established that the defendant has paid, if anything, more than what he was liable for as a 4-anna sharer of the putnee. It is worthy of remark that the defendants 3, 4, and 5, the 6-anna sharers, admit in their written statement that defendant No. 2 has paid all that he is liable to pay as a 4-anna sharer: they further state that plaintiff may possibly have made payments on account of their 6-anna share, but that they are entitled to set off payments made by them on account of the plaintiff. However, the defendants 3, 4, and 5 have not been held liable to the plaintiff, and they are not before the Court. In a suit of this description in which a joint decree cannot be passed, the specific liability of each co-sharer must not only be alleged, but must be clearly established.

We reverse the decision of the Subordinate Judge, and dismiss the plaintiff's suit with costs in both Courts bearing interest.

The 19th January 1871.

Present:

The Hon'ble Louis S. Jackson and W. Ainslie, *Judges.*

Procedure—Evidence—Appellate Court.

Case No. 1470 of 1870.

Special Appeal from a decision passed by the Additional Judge of Tirhoot, dated the 31st March 1870, affirming a decision of the Subordinate Judge of that District, dated the 2nd March 1867.

Lalla Juggessur Sahoy (Plaintiff), *Appellant,*

versus

Gopal Lall (one of the Defendants), *Respondent.*

Mr. W. A. Montriou for Appellant.

The Advocate-General for Respondent.

In a suit to recover possession of a share of an estate on the ground of purchase at a sale in execution, which share was alleged to have been knocked down by the Collector to another party in an execution-sale under Act XI. of 1859, where it was found that the plaintiff's purchase had not been *bonâ-fide*, the right, title, and interest of the decree-holder having been previously purchased *benamee* by the judgment-debtor himself:

HELD that the real purchaser was the judgment-debtor, and that the holder of the rent-decree could properly sell either the estate or the said right, title, and interest.

It is the duty of the Judge of an Appellate Court to allow the parties or their pleaders to submit the evidence to him at the hearing in open Court, and to make upon the evidence so submitted every comment, and found upon it every argument they may think necessary.

Where the decision of a case involves issues of fact, and the first Court has gone fully into the evidence, and recorded its finding and decision, if the Appellate Court agrees with the conclusions of the Court below, the Appellate Court is not obliged by law to state in detail the reasons previously recited, in which it concurs.

Jackson, J.—THE plaintiff in this case sued to recover possession of a share in a certain estate, alleging that he had purchased that share at a sale in execution of a decree obtained by one Oodit Narain against the owner Sooambur Singh; that he had entered into possession under his purchase, but that, under a sale held by the Collector in execution of a decree under Act X. of 1859 (such sale being held under the provisions of Act XI. of the same year), the same estate had been knocked down to another party, and thereupon the Collector, on the application of that party, one Gopal Lall, had violently and illegally dispossessed the plaintiff, and he thereupon brought his suit.

The trial of this suit appears to me to have been unnecessarily complicated, and I regret to say that the parties have been put to great inconvenience and expense, by the obstinacy and disobedience of orders exhibited by the Additional Judge to whom the case has been twice remanded on special appeal by orders of this Court. On the third trial, however, the Judge has gone into the merits of the case, and has affirmed the decision of the Subordinate Judge dismissing the suit of the plaintiff.

Putting aside various questions which have been raised in the trial of this suit, as I think unnecessarily, the ground on which the suit has been dismissed appears to be shortly this—that, in consequence of the nature of the transaction in execution of the decree in which Oodit Narain was originally plaintiff and Sooambur Singh defendant, the sale in execution and the consequent purchase by this plaintiff appear to have been merely colorable, unreal transactions, and that the plaintiff never acquired any title whatever to any estate.

This decision has been impugned on, it may be said, three grounds. One, that the *ratio decidendi* on which the Judge has proceeded does not sufficiently dispose of the case, and the plaintiff is really entitled to recover; second, that there has been no proper decision by the Judge on the merits, as he has simply adopted the opinion of the Court below without stating his own; and, thirdly, that the Judge has committed an irregularity in the trial of the appeal by refusing to hear the evidence and the comments of the pleaders upon that evidence in the usual and proper way.

It will be most convenient to dispose of the latter ground first. This ground of appeal is based upon an affidavit on the part of the agent or so-called agent of the appellant, who deposes that he was present in Court on the day on which this appeal was called on for hearing, and that in his presence the Judge refused to allow the evidence to be read, and the vakeels of both parties to comment upon it after the general argument of the case was heard. Against this there is the counter-affidavit on the part of a person who is said to be the son of the respondent, and he positively swears that, so far from refusing to hear the evidence read as alleged, the Judge did hear the evidence discussed and commented upon in the usual way.

Now, without going into the question of the credibility of these two statements, respectively, it seems sufficient to say that an affidavit, upon which we should come to the conclusion that the Judge had so far neglected or misconceived his duty in the way stated, ought to be perfectly clear and exhaustive, should leave no doubt upon the subject, and should exclude the possibility of the Judge having done that which it was his duty to do; but the affidavit of the agent is not so. It only states that on a particular day the Judge stopped the reading of the evidence. But that is not the day on which the Judge gave his judgment; and, consequently, it is quite possible that the statements made in it may be all true, and yet that the Judge did afterwards hear the evidence and pronounce his judgment upon it. I should be extremely sorry to believe that the Judge of an Appellate Court should take the course which he is alleged in the statement to be in the habit of taking in hearing appeal-cases, namely, to refuse to allow evidence to be read before him in open Court, and made the subject of comment by the parties or their pleaders, but instead of that merely to read the evidence in private. No doubt, there are cases, especially complicated cases, in which it is desirable that the Judge should have an opportunity of considering the evidence at leisure before giving judgment; but there can be no doubt whatever that it is the duty of the Appellate Court to allow the parties or their pleaders to submit the evidence to him at the hearing in open Court, and to make upon the evidence so submitted every comment, and found upon it every argument they might think necessary. This ground, in my opinion, is not made out.

Then as to the other ground, that the Judge has simply adopted the observation of the first Court, that is equally unfounded. Where the decision of the case involves the determination of issues of fact, and the determination of those issues is based upon evidence, if the Court of first instance has gone fully into that evidence, and has recorded its finding and decision upon it, I think that, when the Appellate Court agrees with the conclusions of the Court below upon those facts, for the reasons stated by that Court, it is not the intention of the law that the Judge of the Appellate Court should be obliged to state in detail the very same reasons which had previously been recited, and in which he concurs. I do not mean

to say that there is any general rule, nor do I mean to say that in this case it would not have been well, under the particular circumstances (namely, of two previous remands), if the Judge had stated carefully and clearly the reasons upon which his decision was based; but I do mean to say that the decision which he has now recorded is one legally sufficient and one on which no round of special appeal can lie.

We now come to the consideration of the reasons on which the Judge has thrown the plaintiff out of Court. The Judge in effect I understand to have found, as the Subordinate Judge in effect also finds, that the alleged purchase by the plaintiff in execution of a decree against Sooambur Singh was not, in fact, a purchase by the plaintiff at all; that the execution against Sooambur Singh was not a *bonâ-fide* genuine execution, but that previously the right, title, and interest of the decree-holder in that decree had been purchased *benamee* on behalf and for the benefit of Sooambur Singh himself; and that the sale which took place in pursuance thereof was a sham sale, the person furnishing the funds and acting throughout being Sooambur Singh himself. Probably it would be held in such a case that, by the purchase on behalf of Sooambur Singh and with his money, the decree had, in fact, been extinguished; but it is sufficient to say that by the findings the plaintiff did not acquire anything, did not buy the title to this property. The person who really purchased was Sooambur Singh himself; and consequently the person who obtained the decree in the rent-suit could properly sell either the estate, or the right, title, and interest of Sooambur Singh in that estate. That being so, I think the Courts below were quite right in dismissing his suit.

And I should say that the finding has not been impugned on the ground that there was no evidence to support it There was evidence, and the Court below found upon that evidence in favor of the defendant. I do not think we are in a position to say that it was not justified in coming to that conclusion upon that evidence. What our own conclusion would have been if we heard the case as a regular appeal is another question. I think the special appeal must be dismissed with costs.

It was remarked, and with some plausibility, by the learned Counsel who appeared for the appellant, that the plaintiff had been, by the wrongful act of the Collector, unfairly placed in the disadvantageous position of plaintiff, whereas, but for that violent and improper proceeding, his client would have been in the position of a defendant. On that it seems to me sufficient to say that, if the case was so the plaintiff had only to avail himself of the remedy provided by Section 15, Act XIV. of 1859, and to bring his suit as a simple possessory suit. But he thought fit to come into Court with a civil suit in the usual way, and therefore undertook to prove the title which he advanced, and must take the consequences.

Ainslie, J.—I concur.

The 9th December 1870.

Present:

The Hon'ble E. Jackson and Onookool Chunder Mookerjee, *Judges.*

Notice of enhancement—Ryots—Middlemen.

Case No. 1412 of 1870 under Act X. of 1859.

Special Appeal from a decision passed by the Judge of the 24-Pergunnahs, dated the 14th April 1870, affirming a decision of the Deputy Collector of Busseerhaut, dated the 18th October 1869.

Kalee Prosunno Ghose and another (Defendants), *Appellants,*

versus

Hurish Chunder Dutt and others (Plaintiffs), *Respondents.*

Baboo Oopendro Chunder Bose for Appellants.

Baboos Kalee Prosunno Dutt and *Kheltur Mohun Mookerjee* for Respondents.

Where a party who was not personally a cultivator of the land, but held a large jumma with a number of ryots below him, was treated in a notice of enhancement under Clause 1, Section 17, Act X. of 1859, as an ordinary ryot having a right of occupancy, it was held that the notice was not on that account illegal or informal.

Jackson, J.—THIS is a suit for enhancement of rent and for arrears of rent at an enhanced rate. Both the Lower Courts have decreed the enhanced rate, and a special appeal has been preferred from the decision of the Lower Appellate Court.