The 19th January 1871.

Present:

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

Contribution— Jurisdiction—Co-sharers — Joint decree — Specific liability.

Case No. 1700 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Hooghly, dated the 16th May 1870, modifying a decision of the Moonsiff of Pundooah, dated the 17th February 1870.

Pitambur Chuckerbutty (Defendant), *Appellant,*

versus

Bhyrubnath Paleet and others (Plaintiffs), *Respondents.*

Baboos Hem Chunder Banerjee and *Romesh Chunder Mitter* for Appellant.

Baboos Khettronath Bose and *Kedarnath Chatterjee* for Respondents.

A suit to recover money alleged to have been paid in excess of plaintiff's share of rent on account of his co-tenant, was held to be a suit for contribution, and as such not cognizable by the Small Cause Court.

Such excess payment having once been pleaded as a set-off in a suit for rent, and urged under the authority of a letter of assignment which the defendant (present plaintiff) failed to prove, it was held that on that ground his suit to recover the payment in question should have been dismissed.

In a suit for contribution, where a joint decree cannot be passed, the specific liability of each co-sharer must be, not only alleged, but clearly established.

Kemp, J.—This was a suit to recover certain moneys alleged to have been paid to the zemindar by the plaintiff in excess of the share of plaintiff, and on account of defendant No. 2, Pitambur, who is the special appellant to this Court.

The alleged payments were made on account of the rents for the years from 1272 to 1275. The putnee lot "Chacheetarra" is owned by the following sharers:—

	As.
Plaintiff	2
Defendant No. 2, special appellant	4
Defendant No. 6	4
Defendants 3, 4, and 5 ...	6
	16

The plaintiff based his demand for contribution as against the defendant No. 2 upon a barrat or assignment, by which, he alleges, he was authorized by the defendant No. 2 to pay the sum claimed. It is further alleged that, in a suit for the rent of the dur-putnee held by the plaintiff, which was brought by the defendant No. 2 as against the plaintiff, the latter demanded to set off the alleged payments made by him on account of the defendant No. 2's share in the putnee as against the rent claimed; but the Revenue Authorities, holding that the plaintiff had not established the set-off, disallowed the claim.

The first Court found that the barrat or assignment was proved, and gave the plaintiff a decree in full.

The Subordinate Judge of Hooghly, in a decision which is not very intelligible, first remarks that the suit "was of the Small "Cause Court class; but as it was for a sum "above 500 rupees, it was capable of "going on to special appeal;" we quote the very words of the Subordinate Judge.

The main pleas taken by the defendant No. 2 before the Subordinate Judge were: *1st.*—That the Civil Court had no jurisdiction to try a claim for rent; and that, as the plaintiff's plea of payment had been rejected in the Revenue Court, the suit could not proceed. *2nd.*—The defendant denied the assignment empowering the plaintiff to pay the rents for him to the zemindar. *3rd.*—That the defendant had paid rent in excess of his share in the putnee.

The Subordinate Judge says: "The case is one for adjustment of accounts, and therefore the Civil Court has jurisdiction." The Subordinate Judge, after setting out the shares of the various defendants in the putnee, finds "that the plaintiff and the defendant Kalee Pershad had paid the rent due on account of their shares; but that the defendant No. 2, Pitambur, and the other 6-annas shareholders paid alternately; that is to say, Pitambur, defendant, had paid the "shushmai" kist, while the 6-annas shareholders paid the "doazdummai" kist. The Subordinate Judge finds that "the 10-annas sharers—*i. e.*, Pitambur "who owns 4 annas, and the other defendants "who own 6 annas, or together 10 annas "—instead of paying the rent for which the "10-annas share is liable, had paid the rent "for an 8 annas 13 gundas 1 cowrie 1

krant share only, and that the plaintiff "had paid the rent to the zemindar for the "difference between 10 annas and 8 annas "13 gundas 1 cowrie 1 krant, or for "1 anna 6 gundas 2 cowries 2 krant; "that it was, therefore, but fair and just in "a Court of equity and good conscience "that the plaintiff should get back the sum "on account of the 1 anna 6 gundas 2 "cowries 2 krants paid on defendant's ac- "count to the zemindar, since he, the plaint- "iff, has been made liable to the defendant "Pitambur, for the rents of the dur-putnee "under the decree of the Revenue Court." We have again quoted the words of the Subordinate Judge. The Subordinate observes further that "he regrets he cannot "concur with the first Court in considering "the deed of assignment, said to have been "given by the defendant Pitambur, to be "a legal document, it not bearing a stamp, "and not having been satisfactorily proved;" further "that this plea had been already "set up with regard to the rents of 1271, "and had been rejected."

Further, the Subordinate Judge remarks that "the wording of the barrat brings "doubt on it." The Subordinate Judge concludes his judgment by saying that, although "he cannot concur with the Moon- "siff in the opinion that the barrat has "been proved, still he feels fully con- "vinced and satisfied in mind that plaint- "iff paid the dur-putnee rents to the zemindar "for the benefit of the defendant No. 2, "Pitambur, and that the other defendants "*i. e.*, the 6-annas sharers, had been correct- "ly brought under the head of defendants "owing to the understanding, as seen from "the defendant's dakhilas, that Pitambur "should pay the 'shushmai' kist, and the other "defendants the 'doazdummai' kist, and both 'are in laches with regard to 1 anna 6 gun- "das 1 cowrie 1 krant;" he, the Subordinate Judge, therefore, saw no reason to interfere with the Moonsiff's decision against Pitambur, defendant No. 2; the other defendants to pay their own costs.

Several grounds have been taken in special appeal, but before deciding them we may observe that the Subordinate Judge is wrong in saying that this is a suit of the "Small Cause Court class." It is clearly a suit for contribution, and it has been held by the late Chief Justice, Sir Barnes Peacock, that such a suit is not cognizable by the Small Cause Court.

The 1st ground is that, as the suit of the plaintiff is based upon a letter of assignment, which the Lower Appellate Court held to be not proved, the suit ought to have been dismissed.

The 2nd ground is that, the payments, if admitted, were voluntary or officious payments; that the plaintiff has failed to show that there was any pressure upon him or any risk to his share which would justify such payments.

The 3rd ground is that as the question of whether the plaintiff had made these payments on account of the share of the defendant, special appellant, was determined by the Collector in the rent-suit adversely to the plaintiff, such question cannot be re-opened.

The 4th ground is that there is no proof or evidence that the plaintiff made any payment on account of the defendant's share.

The 5th ground is that the defendant has proved that he paid more than he is liable to pay on account of his 4-annas share.

We think that the 1st, 2nd, and 5th grounds are good grounds, and that the decision of the Subordinate Judge must be reversed.

It is clear that the plaintiff based his suit on the letter of assignment empowering him, as he alleges, to pay to the zemindar a portion of the rent due by the appellant. The Lower Appellate Court holds that this deed has not been proved. We may also observe that this plea of payment on account of the rents, or a portion of the rents, of defendant's share by the plaintiff was rejected by the Revenue Court in the suit for rent brought by the defendant No. 2 against the plaintiff, in which suit the plaintiff pleaded a set-off under this very deed, and failed to prove it. We think that the plaintiff's suit ought to have been dismissed on this ground, but we proceed to dispose of the other points.

On the second ground, we are of opinion that these payments, even admitting they were made, were voluntary officious payments. There is no evidence, nor has the special respondent's pleader been able to show us that there was any pressure upon the plaintiff to pay on account of any share but his own.

There was no decree, no sale impending, nothing which would justify his paying on

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.