

The 11th January 1871.

Present :

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

Cross-appeals—Section 348, Act VIII. of 1859.

Case No. 1418 of 1870.

*Special Appeal from a decision passed by
the Subordinate Judge of Chittagong,
dated the 2nd March 1870, modifying a
decision of the Sudder Moonsiff of that
District, dated the 6th November 1869.*

Anwar Jan Bibee (Defendant), *Appellant,*

versus

Azmut Ali (Plaintiff), *Respondent.*

Baboo Okhil Chunder Sein for Appellant.

Baboo Huree Mohun Chuckerbutty for
Respondent.

In a suit to recover possession of certain land against A, who claimed to be its proprietor, in which *J. B.*, who claimed to be a ryot, was made co-defendant, plaintiff obtained a decree against the former, but his suit, as against the latter, was dismissed. *A* appealed from the decree, and during the course of the appeal the plaintiff was allowed to take a cross-appeal with regard to the dismissal of his suit against *J. B.*

Held that the cross-appeal should not have been admitted.

Jackson, J.—The plaintiff, respondent in this appeal, preferred this suit to recover possession of certain lands from one Anwar Ali, and he made co-defendant with Anwar Ali one Anwar Jan Bibee, the special appellant, who, he alleged, was colluding with Anwar Ali, and setting up a false title as ryot on the disputed land.

The first Court decreed the plaintiff's suit as against Anwar Ali, but dismissed it as against Anwar Jan Bibee, being of opinion

that she had given satisfactory proof that she had long been the ryot in occupation of the land. The plaintiff preferred no direct appeal from this decision dismissing his suit against Anwar Jan Bibee; but Anwar Ali appealed from the decree passed against him. During the course of this appeal, the plaintiff was allowed by the Appellate Court to take a cross-appeal as regards the dismissal of his claim against Anwar Jan Bibee, and the Appellate Court, taking a different view of the evidence from the first Court, decreed the plaintiff's suit against Anwar Jan Bibee also.

In special appeal it is contended that a co-respondent in an appeal cannot re-open, by a cross-appeal, a decision which has been passed between him and another co-respondent. At first sight, the terms of the law, Section 348, Act VIII. of 1859, are wide enough to permit a respondent in an appeal to take any objection to the decision of the first Court, as if he had preferred a separate appeal from that decision. But there are numerous precedents of this Court which have restricted those terms. It has been held in a long series of decisions that the cross-appeal cannot re-open any questions which have been decided between co-respondents, but must have reference to the appellant and the points which are in dispute between the respondent who takes the cross-appeal and the appellant. It is quite possible that there may be cases in which, when an appellant succeeds in his appeal, questions will be opened up as between the co-respondents which would otherwise have been decided; and it is also possible, when interests are identical, that a respondent succeeding in his cross-appeal may open up questions as between himself and his co-respondent. But that is not the case in this litigation. The interests of Anwar Ali and Anwar Jan Bibee are completely distinct and separate. Anwar Ali claimed to be the proprietor of the disputed land. Anwar Jan Bibee claimed to be the ryot upon it. The plaintiff submitted to the decision, upholding Anwar Jan Bibee's ryotee interests, and he cannot prefer a cross-appeal as against that decision on an appeal of Anwar Ali as regards the proprietary right. The Subordinate Judge was in error in admitting this cross-appeal, and we set aside his decision upon it, restoring that of the Moonsiff who determined in favor of Anwar Jan Bibee.

The costs of this special appeal will be paid by the plaintiff, special respondent.