

performance of which a decree has passed to sue in the mofussil civil courts for possession of the land covered by such deeds, and it is incumbent on the court in determining such a case to interpret the terms of the kubooleut and to decide upon all the circumstances under which the defendant and plaintiff vendor sold the village of Kistopore, as shewn from the evidence and the pleadings, to pass a clear order either for the decreeing or dismissal of the plaintiff's claim.

"We admit the special appeal to try whether on both the grounds urged by special appellant, the decision of the judge is or is not incorrect and defective, and if it be, whether the case should not be remanded to him for further investigation."

[32] JUDGMENT.

From the pleadings before us there appears no question as to the rights conveyed to Bhowanichurn by the kubooleut executed by Muddoooodun and the subsequent decision of the supreme court, dated 6th July 1847, in favour of Bhowanichurn. The dispute between the parties now before the court, regards the extent of that right, the plaintiff who derives his title from Bhowanichurn, asserting that the gbur-bati, &c., mentioned in the kubooleut, comprised 74 beegas while the defendant alleges that the gbur-bati and outcheree, &c., were contained in 2½ beegas. We think that the issue to be determined by the lower court was the extent of the right conveyed by the kubooleut, viz, whether the gbur-bati, &c., made over by that instrument to Bhowanichurn comprised 74 beegas or only 2½ beegas, and that a conveyance under the decree of the supreme court was unnecessary. We remand the case to the judge for re-trial with reference to these remarks.

The 13th January, 1858.

PRESENT: C. B. TREVOR, G. LOCH AND H. V. BAYLEY, ESQRS.,
Officiating Judges.

CASE NO. 190 OF 1855.

Regular Appeal from the decision of Mr. J. Grant, Judge of zillah
Dinagapore, dated 18th January 1855.

JOYGOPAL MOONSHEE (*Plaintiff*), *Appellant v.* GOHERKAUNTH
MOONSHEE (*Defendant*), *Respondent.*

[*Suit for contribution—Debt borrowed by one brother and discharged by him—Suit for contribution against other—Plea that amount was not borrowed for benefit of joint estate—Allegations of plaintiff inconsistent with his statements in previous litigation—Suit dismissed.*]

Appeal dismissed as the plaintiff's allegations in the present suit were at variance to those made by him in a former suit relative to the same subject.

Vakeel of Appellant—Baboo Bungsheebuddun Mitter.

Vakeels of Respondent—Baboo Ramapersaud Roy, Kishenkishore Ghose, Sumbhoonath Pundit and Kaleprosunno Dutt.

SUIT laid at Company's rupees 1,997-0-3.

The plaintiff and defendant are brothers and hold joint possession of mouza Gopalpore, &c., zillah Dinagapore, bearing a sadder jumma of rupees 6,380-7-8 g. 3 c.

One or other of the parties remains in the mofussil and superintends the collections. In Cheyt 1255 B. S., a kist of the Government revenue amounting

to rupees 4,188 fell due, and the plaintiff who was then in charge of the collections, being unable as he alleges to collect the whole from the ryots, borrowed rupees 3,000 from [33] Gobindchunder mahajan, and so liquidated the Government claim. The mahajan subsequently sued him for the balance of the bond and obtained a decree with interest and costs for rupees 3,962-3, which the plaintiff paid. Plaintiff borrowed the money to save the joint estate from sale, and as the money was spent for the benefit of his brother as of himself, he now sues to recover rupees 1,981-1-9½, being half of the sum decreed against him with interest from his brother who refuses to admit his liability to pay any part of the loan.

The defendant urged that he could not be held liable for the amount of a bond executed by his brother in his own name and to which he was not a party and of which he was not cognizant nor assenting; that the money was borrowed not to pay the Government revenue, but to satisfy demands against his brother who was engaged in trade; that the collections from the joint estate in 1255 were more than sufficient to pay the Government revenue, and consequently there was no necessity for borrowing any money for that purpose. The judge dismissed the case because there was no proof that defendant sanctioned the charges and no explanation as to the accounts having been obtained from him by the plaintiff. The charges for usual expenses, extra expenses, debts paid and embezzlements, are not supported by documents, and there is nothing in the accounts which can make the defendant liable for the sum sued for.

In appeal the plaintiff urges that the judge has admitted the amount of collections entered in his account to be correct, but has rejected his statement of charges; he should either have admitted both or rejected both; that defendant does not deny the payment of the Government revenue by the plaintiff, and that it was liquidated by means of the loan, is proved by the evidence of the witnesses. In reply the defendant pleads that the collections of 1255 were upwards of rupees 16,000, more than sufficient to pay the Government revenue; that the charges in plaintiff's account are exorbitant and unusual and being other than the legitimate charges for collection, he could not admit them; that the Government revenue for 1255 was paid out of the collections from the estate and not from the money borrowed by the plaintiff, is proved by the joint petition filed by the plaintiff and himself when they brought a summary action before the collector to recover the sum of rupees 725 embezzled by the joint tehseldar Kaleedass Roy in 1255, and also from the statement made in their joint replication when suing the same party in the civil court. These statements set forth that in 1255, Kaleedass Roy collected rupees 16,174, of which rupees 12,166 were paid as Government revenue and after deducting other charges, a balance of rupees 725 was ascertained to be due from him.

As the statement made in the above document is at variance with the statement made in the present plaint and the appellant [34] admits that he filed the above pleading and is unable to give any explanation of the obvious contradiction in his present and former statements, we dismiss the appeal with costs and affirm the decision of the lower court.