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holds whether the works were executed at the expense of the land-holder or of the Government. But if the words "for which" were intended, with some laxity of language, to relate to "works of irrigation or other improvements," then there is no ground on which they must be limited in their relation to either the one or the other only of the two kinds described; the form of the sentence permits their being equally applied to both. It was said that the Government could only be supposed to intend to exact an additional revenue when the additional value had been imparted at their sole expense. This may be so, but certainly such intention has not been clearly expressed, and we ought not to hold, except on very clear words, that the Government have deprived themselves of the right to a fair share in the increased produce of the land though not directly brought about by State expenditure. Though it is not indispensable for us to decide the point, we think it right to express our opinion that the ground on which the Lower Appellate Court dismissed the plaintiff's suit is a sound one. The decree below must be affirmed, and this special appeal dismissed with costs.

Appeal dismissed.

Appellate Jurisdiction. (a)

Special Appeal No. 267 of 1869.

SUBBARAMIEN.....*Special Appellant.*

PONNUSAWMY CHETTY.....*Special Respondent.*

In a suit to recover the possession of land of which the plaintiff had been dispossessed in execution of a decree against the 1st defendant, it appeared that the plaintiff had applied within one month from the date of his dispossession to the Court from which the process of execution had issued under Section 230 of the Code of Civil Procedure setting up his title, and it was numbered and registered as a suit under the section. Before the claim came on for hearing the plaintiff was allowed by the Court to withdraw the proceeding with liberty to bring a fresh suit upon the claim set up. The plaintiff subsequently brought the present suit.

Held, that the former proceeding was a suit within the meaning of Section 97 of the Code, and liberty having been given on its withdrawal before decree to bring another suit the present suit was well brought.

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267 of 1869.

THIS was a Special Appeal against the decision of V. Sundara Naidoo, the Principal Sadr Amin of Tranquebar, in

Present : Scotland, C. J. and Collett, J.

Regular Appeal No. 6 of 1868, reversing the decree of the Court of the District Munsif of Tiruvarur, in Original Suit No. 112 of 1865. 1870.
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This was a suit for the recovery of 13 maws and $51\frac{7}{8}$ gulies of nunjah and manaikut land, as well as Rupees 83-6-9, being the value of produce. It was stated in the plaint that while the plaintiff was in possession of 8 valies of nunjah and punjah lands, including those in dispute, which he obtained by purchase at the revenue sale effected consequent on the failure of payment of kist due by the 1st defendant, who was the original proprietor, he was deprived of them on the 10th December 1861, in execution of the decree in Suit No. 458 of 1857 on the file of the Valangiman Munsif, by which the 1st defendant was adjudged to surrender certain lands to the party who assigned the decree to the 2nd defendant, and that on the 6th January 1862, the plaintiff appealed to that Court to give him possession of them, and his application was duly registered and numbered as Suit 301 of 1862, but that he withdrew it on the 17th February 1864 with the permission of the Court to institute a fresh action.

The 2nd defendant, who alone defended the suit, pleaded that the suit was not only barred by the Statute of Limitation, but also not sustainable under Section 7, Act VIII of 1859, inasmuch as the plaintiff had omitted to sue for the lands in dispute in Original Suit No. 104 of 1864 on the file of the Court of Small Causes at Negapatam, and that the lands did not form part of the revenue sale, nor did they yield produce.

The Munsif's judgment contain the following:—

The Principal Sadr Amin's Court, having in its proceedings under date the 27th November 1868, called upon this Court to decide 1st, whether or not the plaintiff's claim is barred by Law of Limitation, and 2nd, whether or not the claim is affected by Section 7 of the Civil Procedure Code, the Acting District Munsif submits his finding thereon as follows upon the evidence already recorded in this case.

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With regard to the first issue, the Acting District Munsif finds in the affirmative. The plaintiff claims to recover certain land which alleged himself to have been dispossessed of on 10th December 1861, in execution of decree in Suit No. 458 of 1857, on the file of the District Munsif's Court of Valangiman. In such cases, one month is the period limited for preferring claims as provided by Section 230 of the Civil Procedure Code, and Section 3, Act XIV of 1859. It is true that the plaintiff preferred a Suit in No. 301 of 1862 before this Court within the proper period and subsequently withdrew it on 18th February 1864 with sanction to bring a fresh suit, but it is clear that there is no authority for such a sanction, because Section 231 of the Civil Procedure Code expressly provides that no fresh suit can be entertained in respect of the above cause of action. The plaintiff's claim which was brought on 16th February 1865 is therefore clearly barred.

As regards the 2nd issue, the Acting District Munsif is of opinion that Section 7 of the Civil Procedure Code cannot affect the claim, for it provides that every suit shall include the whole of the claim arising out of the cause of action, but it appears from records that the present suit and Suit No. 104 of 1864 on the file of the Principal Sadr Amin's Court of Negapatam include properties arising out of different causes of action, the one being for the land put in possession of Ponnusawmy Chetty in execution of decree in No. 458 of 1857 on the file of the District Munsif's Court of Valangiman, and the other being for the land placed in possession of Ponnusawmy Annah in execution of decree in No. 12 of 1860 on the file of the Principal Sadr Amin's Court of Tranquebar. The properties embraced in both the suits should not therefore have been included in Suit No. 104 of 1864 above referred to.

Upon appeal the following judgment was given by the Principal Sadr Amin :—

I entirely concur with the present Munsif in his opinion that the suit is barred by the Statute of Limitation. Section 230 of the Civil Procedure Code provides, that if any person other than the defendant shall be dispossessed of any

land or other immoveable property, in execution of a decree, he may apply to the Court within one month from the date of such dispossession, and the application shall be numbered and registered as a suit. The procedure prescribed by this section has been adopted as the plaintiff himself allows. Nevertheless, he withdrew the action at his own risk, without any apparent cause. He is therefore excluded from instituting the present suit. The permission granted to him by the Lower Court for the same was certainly unwarranted and illegal.

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The plaintiff appealed specially to the High Court against the decree of the Principal Sadr Amin on the grounds:—

1. The Court of First Instance had power to grant permission to bring a fresh suit.
2. Section 230 of the Civil Procedure Code did not apply to this fresh suit.
3. The plaintiff had twelve years to bring a regular suit.

Johnstone, for the special appellant, the plaintiff.

Sunjiva Row, for the special respondent, the 2nd defendant.

The Court delivered the following

JUDGMENT :—This is a suit to recover the possession of certain land of which the plaintiff had been dispossessed in execution of a decree against the 1st defendant for the delivery of such land, and the suit has been held by both the lower Courts to be barred by Section 231 of the Code of Civil Procedure. The question now raised on special appeal by the plaintiff is whether that decision and the decree of the Lower Appellate Court dismissing the suit are wrong.

The facts are :—that the plaintiff on the 6th of January 1862, and within a month from the date of his dispossession, made an application founded upon his present claim to the Court from which the process of execution had issued under

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Section 230(a) of the Code of Civil Procedure, and it was numbered and registered as a suit in accordance with the section. But on the 18th February 1864, and before the claim came on for hearing, the plaintiff was allowed by the Court to withdraw the proceeding with liberty to bring a fresh suit upon the claim set up. He thereupon instituted the present suit on the 16th of February 1865.

The point on which the question turns is the applicability or non-applicability of Section 97(b) to a proceeding under Section 230 after it has been duly numbered and registered. If applicable the suit is not barred, for it is expressly provided in Section 97 that the plaintiff bringing a fresh suit with the leave of the Court "shall be bound by the rules for the limitation of actions in the same manner as if the first suit had not been brought," and twelve years from the cause of action is the period of limitation prescribed for a suit of this nature.

It seems clear to us that the effect of Section 230 read with Section 231 is to empower and require the Court to deal with an application under it for which probable cause has been shown, as a plaint on the institution of a suit, and

(a) Section 230 is as follows :—

If any person other than the defendant shall be dispossessed of any land or other immoveable property in execution of a decree, and such person shall dispute the right of the decree-holder to dispossess him of such property under the decree on the ground that the property was *bonâ fide* in his possession on his own account or on account of some other person than the defendant, and that it was not included in the decree, or, if included in the decree, that he was not a party to the suit in which the decree was passed, he may apply to the Court within one month from the date of such dispossession, and if, after examining the applicant, it shall appear to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff and the decree-holder as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like powers as if a suit for the property had been instituted by the applicant against the decree-holder.

(b) Section 97 is in the following terms :—

If the plaintiff at any time before final judgment satisfy the Court that there are sufficient grounds for permitting him to withdraw from the suit with liberty to bring a fresh suit for the same matter, it shall be competent to the Court to grant such permission on such terms as to costs or otherwise as it may deem proper. In any such fresh suit the plaintiff shall be bound by the rules for the limitation of actions in the same manner as if the first suit had not been brought. If the plaintiff withdraw from the suit without such permission, he shall be precluded from bringing a fresh suit for the same matter.

in proceeding with the trial of the claim of the applicant to apply the law of procedure in just the same manner and with the same effect as if the applicant were the plaintiff in a suit instituted by plaint in the ordinary way. In short the sections make the application, when numbered and registered, a regular suit for all purposes.

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The former proceeding therefore was a suit within the meaning of Section 97, and liberty having been given on its withdrawal before decree to institute another suit, the present suit was well brought. Consequently the decree of the Lower Appellate Court is wrong and must be reversed, and the case remanded for the determination of the other questions raised in the appeal to that Court. The respondent must pay the costs of the appellant in this Court. The liability to the costs hitherto in the Lower Courts will abide the determination of the Lower Appellate Court.

Appellate Jurisdiction. (a)

Regular Appeal No. 80 of 1869.

Honorable D. ARBUTHNOTT, Collector and Agent to the Court of Wards, on behalf of the minor Zemindar of Gundamanaika- nur and 3 others	} <i>Appellants.</i>
OOLAGUPPA CHETTY... ..	

Respondent.

In a suit to recover, from the minor son of the late possessor of a Polliem of which the guardians of the minor were in possession by virtue of a fresh grant made by the Government to the minor after the death of his father the late possessor, money lent to the father of the minor to pay off arrears of peishcush for which the Polliem was about to be attached and for reproductive work done upon the land.

Held, that the income of the Polliem was not liable for the debt.

THIS was a Regular Appeal against the decree of J. D. Goldingham, the Acting Civil Judge of Madura, in Original Suit No. 4 of 1868.

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of 1869.

The plaint stated that the plaintiff and the late Zemindar of Gundamanaikanur filed a razinamah as plaintiff and defendant respectively in Original Suit No. 17 of 1863 on the file of the Civil Court of Madura. The razinamah provided

(a) Present : Scotland, C. J. and Holloway, J