

(1867) 05 CAL CK 0001

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 530 of 1866

In Re: Gobind Koomar
Chowdhry

APPELLANT

Vs

RESPONDENT

Date of Decision: May 31, 1867

Judgement

Sir Barnes Peacock, Kt., C.J., Trevor, Kemp and Macpherson, JJ.

We think that in this case the Deputy Collector had power to enforce restitution of so much of the amount which was levied under the decree as it originally stood as exceeded that to which the plaintiff is entitled under the decree as modified. He was wrong in refusing the application to enforce restitution. He also appears to have committed a mistake with reference to the costs which were awarded by the decree of this Court to the defendant. The Deputy Collector ought to have enforced the decree with regard to those costs, and to have enforced restitution of the amount which had been levied in excess of the amount finally decreed. Under these circumstances, we think that this Court, under the general powers of superintendence vested in it, has power to order the Deputy Collector to enforce restitution, and also to execute that part of the decree which awards costs to the defendant.

Loch, J.

2. I think that, under the words "shall have superintendence over all Courts," used in s. 15 of 24 and 25 Vict., c. 104, this Court has the power, in cases where no appeal lies to the Judge, of directing a lower Court to do that which is legal, and to correct that which is illegal in its proceedings.