

(1870) 02 CAL CK 0025

Calcutta High Court

Case No: Special Appeals Nos. 2588 and 2589

The Collector of
Tippera, on behalf of
Government

APPELLANT

Vs

Mussamat
Mafizunnissa Bibi

RESPONDENT

Date of Decision: Feb. 14, 1870

Judgement

Phear, J.

We think that, a special appeal does not lie in this case. The plaintiff's claim is only for rupees 408, and it is clear her right is based either upon a tort committed by the Government, or on an implied contract. She is seeking to recover back money which was paid by her ancestor to Government, and her right to recover it must be either because the Government procured this payment by wrongful means, or that it has got the money in its hands under such circumstances that it is bound to repay it, in other words, on an implied contract to repay it. Either way, the cause of action is one cognizable by a Court of Small Causes, and as the amount of claim is less than rupees 500, section 27, Act XXIII of 1861 applies, and there is no special appeal to this Court. We, therefore, reject this petition of appeal with costs. It is admitted by the pleaders on both sides that the order just made will govern appeal No. 2588 also; and, accordingly, that appeal is likewise rejected with costs.