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reason the parties to a suit are unable to take advantage of the newer and simpler procedure.

In my opinion, therefore, the plaintiff is entitled to maintain this suit, and should have a decree in the terms of the first and second prayers of the plaint, the defendant having six months time to redeem. The defendant, however, is not to blame for the necessity having arisen for recourse to a suit. That was in consequence of differences between the parties interested in Gostobehary Mullick's estate. The decree will, therefore, be without costs up to decree.

Attorneys for the plaintiff: *Swinhoe & Co.*

APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Tottenham.

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 March 1.

NITTYANUND ROY (PLAINTIFF) v. ABDAR RAHEEM AND ANOTHER
 (DEFENDANTS).*

Public Documents—Evidence Act (I of 1872), s. 74.

In a suit to obtain possession, under a title acquired by purchase at an auction, of certain lands, together with mesne profits, upon setting aside an alleged tuluqua etnami right claimed by the defendants, the defendants, in support of their claim, produced certain documents purporting to be abstracted from, or copies of, Government measurement chittas, dated Mughli 1126-27 (1764). These documents were produced from the Collectorate, but there was nothing to show that they were the record of measurements made by any Government officer.

Held, that they were not "public documents" within the meaning of s. 74 of the Evidence Act.

BABOO Chunder Madhub Ghose and Baboo Ohhil Chunder Sen for the appellants.

Appeal from Appellate Decree, No. 690 of 1879, against the decree of Baboo Koilash Chunder Mookerjee, Second Subordinate Judge of Chittagong, dated the 12th December 1878, modifying the decree of Baboo Chunder Coomār Roy, Munsif of Fatikchhari, dated the 31st January 1877.

Baboo *Bama Churn Bannerjee* for the respondents.

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The facts of this case sufficiently appear from the judgment of the Court (MORRIS and TOTTENHAM, JJ.), which was delivered by

MORRIS, J.—The only point at issue in this case is, whether the etmami tenure of the defendants existed at the time of the Permanent Settlement. The lower Appellate Court, reversing the decision of the first Court, has decided in favour of the defendants. It relies entirely upon certain papers of the year 1126-27 Mughli, corresponding with the English year 1764, which purport to be abstracts from, or copies of, chittas made apparently in that year. The Judge says: "I am inclined to admit them," and he does so, because, to use his own words, "they are public documents compiled by, used by, and guarded by public officers, and their certified copies are admissible as evidence of the contents of the original." Now, in the first place, these documents are not copies of the originals, but they are copies of copies. No reason is assigned why the originals or their copies are not produced. Then, again, there is nothing to show, beyond the fact that they came from the Collectorate, that they are the record of measurements made by any Government officer. So far as we can judge, they are only abstracts of measurement chittas of the year 1126-27. Whether they correctly represent the khutian, or abstract of those chittas, it is impossible to say, for there is no evidence whatever on this point; nor is it apparent in what year they were made, or in what respect they were of public use. Therefore, we find ourselves unable to hold that these documents are "public documents" within the meaning of s. 74 of the Evidence Act. Independently of these documents, there is no evidence which throws back the tenure of the defendants to a later date than 1200 Mughli, which corresponds with the year 1839. In that year this tenure was measured with other tenures of the turnff of the plaintiff under the name of Elmam Allal Roshan. No doubt, in the measurement record of certain plots of this tenure, other tenures, such as Inas, Rofi, Razak, Aziz, and Razak Aziz Kutab, are referred to as apparently connected with

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it. But whether Inas, Rofi, Aziz, and Kutab were relations of the ancestors of Allal and Roshan, grandfathers of the present defendants, is unknown. Even assuming that the etmams bearing those names have some connection with the original etmams of Allal and Roshan, there is no evidence to show how long they existed,—that is to say, whether they were created before or after the Permanent Settlement. It seems to us, therefore, that there is no evidence to support the finding of the Judge in favor of the defendants that the etmam in suit was in existence at the time of the Permanent Settlement. We, therefore, set aside his judgment and restore that of the first Court, with costs of this Court and of the Court below.

Appeal dismissed.

Before Mr. Justice Morris and Mr. Justice Tottenham.

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 March 11.

RAJKISHORE SHAHA (PLAINTIFF) v. BHADOO NOSHOO AND OTHERS
 (DEFENDANTS).*

Money-Decree on Mortgage Bond—Subsequent Suit by Mortgagee to enforce his lien on the Property Mortgaged.

The plaintiff, a mortgagee of certain specific property, given as security for an advance, obtained a money-decree against the representatives of his debtor. A third person, having a claim against the same debtor, seized and attached the specific property mortgaged to the plaintiff, and sold it to A, who had notice of the plaintiff's lien. The plaintiff then brought a suit against A and the representatives of his debtor, to have his lien declared and debt satisfied.

Held, that, notwithstanding the plaintiff's previous money-decree, he was still entitled to enforce his lien against the property pledged.

IN December 1875, one Asman Singh executed a bond in favor of the plaintiff in consideration of a loan of Rs. 899, pledging, as collateral security, an elephant. Asman Singh subsequently died, and on the 8th May 1877, the plaintiff obtained a money-decree on the bond against the representatives of Asman Singh.

* Appeal from Original Decree, No. 278 of 1879, against the decree of J. W. Campbell, Esq., Judge of Rungpore, dated the 16th June 1879.