

1869
 CHARLES
 MACDONALD
 v.
 RAJARAM ROY

On the facts as found, it is clear that the lands which the plaintiffs claim, did not form the pati or share of Gandowr Sing, and could not have been leased by Gandowr Sing to the defendant as forming that share.

A further objection was taken by the special appellant's pleader to the amount of damages; with reference to it, he relied upon a Full Bench decision of this Court, in the case of *Ranee Asmed Kooer v. Maharanee Indurjeet Kooer* (1). It is possible that, had this objection been pressed below, or, indeed, at any stage of the proceedings (for it does not appear to have been taken in the grounds of special appeal), the ruling referred to might have had some application, and that the most the plaintiff could have recovered, would have been the amount of a fair and reasonable rent for the land, as if the same had been let to a tenant during the period of the unlawful possession of the wrong-doer, but we find, on referring to the Judge's decision, that no objection was ever taken to the amount of damages claimed by the plaintiffs, and the plaintiffs' patwarri had given evidence as to the nature and the extent of the crops which could be grown on the land during the period for which damages are claimed.

As, therefore, the defendant chose to rest his case, entirely on the ground that he held the land from Gandowr Sing, and that the 72 bigas were not the property of the plaintiffs, and did not take any exception to the way in which the plaintiffs had calculated the damages, he alleged himself to have sustained.

We do not think that, at this late stage of the case, and specially considering that we are now in special appeal, we should be justified in re-opening the proceedings, or in applying a principle which the special appellant himself never asked to have the benefit of. The special appeal must be dismissed with costs.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

1869
 April 15

TETAI ABOM (ONE OF THE DEFENDANTS) v. GAGAI GURA CHAWA
 (PLAINTIFF).*

Endorsement of Transfer—Stamp Act.

Transfer of an under-tenure, endorsed upon the back of the tenant's patta, is not admissible in evidence, unless it be stamped, as though it were a separate deed.

Baboo *Abhaya Charan Bose* for appellant.

None for respondent.

THE judgment of the Court was delivered by

NORMAN, J.—The plaintiff sues for the possession of 30 bigas of land, which he alleges that he purchased from the defendant's father, on the 4th of May.

* Special Appeal, No. 2074 of 1868 from a decree of the Deputy Commissioner of Sibsagar, dated the 21st May 1868, reversing a decree of the Moonsiff of that district, dated the 16th May 1867.

(1) Case No. 362 of 1867; April 4th, 1868.

1863, for rupees 12. As evidence of the purchase he puts in a transfer endorsed upon the patta by the defendant's father. The lower Appellate Court, reversing the decision of the Moonsiff of Sibsagur, has given the plaintiff a decree, relying upon the endorsement as proving that the defendant's father transferred the patta to the plaintiff.

The objection taken before us is that this endorsement has been rejected by the first Court, upon the ground that it was not stamped; and as such, it was improperly admitted in evidence by the lower Appellate Court. Baboo Abhaya Charan Bose, the appellant's vakeel, refers us to section 14 of Act X, of 1862, by which it is provided that no deed, for which any duty shall be payable under section 2 of this Act, shall be received as creating or transferring any right, or as evidence in any civil proceeding in a Court of Justice, unless such deed, instrument or writing shall bear a stamp of a value not less than that indicated to be proper for it by the schedule annexed to the Act. Under the 23rd clause of Schedule A, a conveyance, or instrument of any description whatever, executed for the sale or transfer, for a consideration, of any land or other property, moveable or immoveable, or of any right or interest in any land, when the purchase-money therein expressed shall not exceed rupees 100, shall bear a stamp of one rupee. The plaintiff's case is that this endorsement on the patta was an instrument of transfer, for a money-consideration of the land to which the patta relates, and therefore, according to the plaintiff's own case, it required a stamp of one rupee. We think the objection taken by the appellant's vakeel is well founded. The instrument in question is not admissible in evidence; and as the rest of the evidence is not consistent with the defendant's case, which is, that this property came into his hand as khurdua, *i. e.*, executor, manager, or trustee of the defendant's father, we reverse the decision of the lower Appellate Court, and dismiss the suit with costs.

1869
TETAI ABOM
v.
GAGAI GURA
CHAWA.

Before Mr. Justice Loch and Mr. Justice Mitter.

NARAKANT MAZUMDAR AND ANOTHER (DEFENDANTS) v. RAJA
BARADAKANT ROY BAHADUR (PLAINTIFF.)*

1869
April 23.

Act X. of 1859—Justice—Declaratory Decree.

The plaintiff filed a suit, for rent, at an enhanced rate, under Act X. of 1859. The Court of first instance dismissed the case, on the ground that the defendants had shown that the tenure was not liable to enhancement. On appeal to the Judge, the plaintiff's suit was dismissed on the ground that he had not proved service of notice, but a declaratory decree was given that the tenure was liable to enhancement.

Held, that the Judge should simply have dismissed the plaintiff's suit. Act X of 1859 gives him no power to make rent a declaratory decree.

Baboo Ramanath Bose for appellants.

*Special Appeal, No 2691 of 1868, from a decree of the Officiating Additional Judge of Zilla Jessore, dated the 16th June 1868, affirming a decree of the Deputy Collector of that district, dated the 30th April 1867.