

NORMAN, J.—This is a suit for rent of 8040 bigas of land at enhanced rates. The case was remanded to the first Court to try what would be a fair and equitable rate for a tenant in the position of the defendant.

1869
RANI SWARNA-
MAYI
v.
GAURI PRASAD
DAS.

We are of opinion that the decision of the Judge is perfectly correct, and proceeds on principles of good sense. In the first place he allows to the defendant who occupies a large area of land, and who is in point of fact very much in the position of a talookdar, a deduction of 15 per cent. from the gross rents which cultivating ryots would pay. He computes this by allowing 8½ per cent. for collection charges, and 6½ per cent. for profits. If the case had rested there, we should have thought that 6½ per cent. would not be enough to enable a man to live comfortably, and to provide against bad seasons and bad tenants. It appears however that the defendant does actually realize for bastu and other lands rates larger than those that have been allowed in the estimate, and therefore under the circumstances of this particular case we cannot say that in this case 15 per cent. is not a fair allowance.

The defendant also claimed under a custom locally known as “*Bishun kancha*,” a deduction of 2 katas per biga for certain lands called “*dokundah*” lands, that is lands bearing two crops in the year, as it is necessary that some of these lands must be left uncultivated for seed beds.

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On these grounds we affirm the decree of the lower Appellate Court, and dismiss this appeal with costs.

Before Mr. Justice E. Jackson and Mr. Justice Mitter.

NARATTAM DAS CHOWDHRY AND ANOTHER (DEFENDANTS) v.
ROSO PYARI CHOWDHRAIN (PLAINTIFF.)*

Suit for *Kabuliat*—Objection not taken in Court below—Special Appeal.

1869
July 2.

In a decree for a *kabuliat*, the term for which it is to remain in force should not be fixed.

* Special Appeals, Nos. 446 and 447 of 1869, from the decrees of the Officiating Judge of Dinagepore, dated the 3rd December 1868, affirming the decrees of the Deputy Collector of that district, dated the 8th September 1869.

1863
 NARATTAM
 DAS CHOW-
 DHRV
 v.
 ROSO PYARI
 CHOWDBRAIN.

An objection that the judgment of the Court of first instance is erroneous under a ruling of the Full Bench of the High Court, not taken before the lower Appellate Court, will not be allowed to be taken in special appeal.

Baboo *Bama Charan Banerjee* for appellants.

Baboo *Girija Sankar Mazumdar* for respondents.

THE judgment of the Court was delivered by

JACKSON, J.—This was a suit for a kabuliati at an enhanced rate of rent. The kabuliati was allowed at an enhanced rate by both the Courts below, and a term of three years was fixed during which the kabuliati was to remain in force. The first ground taken in special appeal is, that this term should not have been fixed; section 76 of Act X. of 1859 applying only to suits by ryots for pattas, and not to suits by landholders for kabuliatis. This point seems to have been decided in 1863, in the case of *James Hills v. Ishore Ghose* (1), in favour of the contention of the special appellants, and the special respondent's vakeel does not object to the erasure of the term from the kabuliati. We therefore modify the decree of the lower Appellate Court to that extent, and we direct that the kabuliati be given without any term.

The second point raised in special appeal is, that the plaintiff not having obtained a kabuliati for the exact amount of rent for which he sued, his suit should have been dismissed altogether under the ruling of the Full Bench. As no objection to this effect was taken before the lower Appellate Court, we will not allow it on special appeal. We accordingly dismiss both these appeals with the exception of the one modification above alluded to. Each party will pay his own costs of the appeal.

(1) Case No. 927 of 1863; September 2nd, 1863.