exhibits in the first instance, ought to be endorsed as directed by section 132. The Procedure Code requires all documents which are intended to be given in evidence to be filed in the first instance, and it appears that, without the leave of the Judge, no document which has not been filed is admissible as evidence. Then when a Judge on a trial thinks it proper to admit a document which has not been filed as an exhibit, surely he ought to take care that it is produced by a proper person, and that the endorsement pursuant to section 132 is made upon it, in order that hereafter it may be known who the person is who produced it. If that had been done, we should have seen upon the face of this document whether it was produced by a vakeel in the lower Court, or whether it was produced by Rung Bahadoor. But in consequence of that not having been done, we are unable to say at the present moment whether Rung Bahadoor did produce it or not. We think that an investigation ought to be made by the Magistrate of Behar into this case, as to whether Rung Bahadoor or any other persons did use, or attempt to use as true, evidence which he or they knew to be fabricated; and further, as regards this particular mookhtearnamah, under section 471 of the Penal Code, to see whether Rung Bahadoor or any other person did fraudulently or dishonestly use as genuine a document which he knew, or had reason to believe, to be a forged document. Under section 171 of the Code of Criminal Procedure, we think that the case should be sent to the Magistrate of Behar for investigation, and direct him to proceed according to law against Rung Bahadoor or any other person or persons for any offence or offences which he or they may appear to have committed against the above-mentioned section or any other section or sections of the Indian Penal Code.

The 12th June 1866.

Present:

The Hon'ble W. S. Seton-Karr and A. G. Macpherson, *Judges.*

Mortgage (Zur-i-peshgee lease)—Recovery of land before expiry of lease—Account.

Case No. 399 of 1866.

Special Appeal from a decision passed by the Judge of Patna, dated the 12th December 1865, affirming a decision passed by the Principal Sudder Ameen of that District, dated the 18th April 1865.

Punjum Singh (Defendant), *Appellant,*

versus

Musst. Ameena Khatoon (Plaintiff), *Respondent.*

Baboo Kishen Succa Mookerjee for Appellant.

Moonshee Ameer Ali for Respondent.

A mortgagor—one who has granted a *zur-i-peshgee* lease—can sue to recover possession of his lands before the expiry of the term fixed by the lease, on the ground that the mortgage-debt has been satisfied by the mortgagee's receipts while in possession.

In the case of a mortgage by a *zur-i-peshgee* lease, the mortgagor is entitled to an account from the mortgagee, notwithstanding an express stipulation in the lease that the latter shall not be liable to account.

THE special appellant contends that the lower Court is wrong—*firstly*, in holding that the mortgagor (this being a case of a *zur-i-peshgee* lease) can sue to recover possession of his lands before the expiry of the term fixed by the lease, on the ground that the mortgage-debt has been more than paid off by the mortgagee's receipts while in possession; and, *secondly*, in holding that the mortgagor is entitled to an account from the mortgagee, when it is expressly stipulated in the lease that the latter shall not be liable to account.

As regards the first point, we are of opinion—and our opinion accords with that expressed by the late Sudder Court on various occasions—that the lower Court was right.

(*See* Sudder Dewanny Adawlut, 1852, pp. 280, 304; 1860, Volume II., page 174; and Regular Appeal 269 of 1859, Anund Gopal Suhae *versus* Gopal Doss, February 28th 1862).

As regards the second point also, we concur with the lower Court. The contract having been entered into prior to the passing of Act XXVIII. of 1855, a condition that a mortgagor shall not claim an account from the mortgagee who has been in possession, does not in any degree bar the operation of the law which declares that the lender is to account to the borrower for his receipts while in possession. (*See* the cases above quoted, and Sudder Dewanny Adawlut, 1851, page 632; 1859, page 1076; North-Western Provinces, Volume X., pp. 51, 198.)

It was argued further for the appellant that the Lower Court's judgment is defective as containing no distinct finding as to the genuineness of one of three bonds which are in dispute in this cause. But we think it clear that the lower Court does substantially find against all the three bonds.

All the objections which have been taken to the decision of the lower Court fail, and we therefore dismiss the appeal with costs.

The 12th June 1866.

Present:

The Hon'ble C. B. Trevor and F. A. Glover, *Judges.*

Damages (Destruction of crops by not cutting through bund)—Special Appeal.

Case No. 3515 of 1865.

Special Appeal from a decision passed by the Principal Sudder Ameen of the 24-Pergunnahs, dated the 26th July 1865, reversing a decision passed by the Moonsiff of Manicktollah, dated the 1st October 1864.

Gopeenath Paul (Plaintiff), *Appellant,*

versus

Lieutenant S. George, Executive Engineer of the 24-Pergunnahs, and others (Defendants), *Respondents.*

Baboo Annund Gopal Paleet for Appellant.

Baboo Kishen Kishore Ghose for Respondents.

Under section 3, Act XLII. of 1860, a suit for damages of any kind below 500 rupees (*e. g.*, a suit for damages for not cutting through a bund whereby plaintiff's crops were destroyed in consequence of accumulation of water) is cognizable by a Small Cause Court, and consequently, under section 27, Act XXIII. of 1861, no special appeal will lie in such a case.

THIS was a suit to recover 61 rupees as damages from the Executive Engineer of the Division for not cutting through a certain bund, whereby plaintiff's crops were destroyed in consequence of the accumulation of water.

There is no occasion for us to notice the pleadings further, as it appears to us that this Court has no jurisdiction to entertain the special appeal now preferred.

By section 27, Act XXIII. of 1861, it is enacted that no special appeal shall lie from any decision passed in regular appeal by any Court subordinate to the Sudder Court in any suit of the nature cognizable in Courts of Small Causes, when the debt, damage, or demand shall not exceed Rupees 500; and the nature of suits cognizable by Small Cause Courts is explained in section 3, Act XLII. of 1860. Amongst the suits so cognizable are suits for "damages." There is no restriction in the section as to any particular kind of damages; nor has it been shewn to us, from any decisions of this Court, that the word is referable to personal damages only. We think, therefore, that it must include damages of any kind when the amount claimed is under 500 rupees; and, that being so, it follows that the present claim was one cognizable by the Small Cause Court, and that no special appeal will lie.

We therefore reject this application with costs.