ed a decree on the 5th of May 1860 for a 12 annas and 4 annas share of the property respectively.

An Ameen was deputed to the spot, and the decree-holders got possession of the land. They are said to have been almost immediately afterwards dispossessed by the defendants; and whilst in that position, Kalee Churn, the 12-annas sharer, is alleged to have sold to the plaintiff, Rajah Leelanund Singh, all his right, title, and interest in the land that had been decreed to him.

In 1866, the Rajah and the 4-annas shareholder, Mundoor Pershad, brought this suit to recover possession of the decreed land with mesne-profits from the day of ouster.

The defence is that the plaintiffs were never dispossessed, but are still holding all the land decreed to them, and that the suit is an attempt to deprive the defendants of other land not included in the decree.

The Subordinate Judge gave a decree for the plaintiff with wassilat, and against this decision the defendants Thakoor Munrunjun Singh and Bhugut Lokenath Singh appeal.

Baboo Chunder Madhub Ghose on their behalf contends, first, that the plaintiff, Rajah Leelanund Singh, has no right to sue on the kubala of his vendor, who was himself out of possession at the time of sale.

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The first objection appears to us wholly untenable. Civil Courts in this country are not merely Courts of law, but of equity also, and although "choses in action" would not ordinarily be assignable in law, they are, and always have been, held to be so by Courts of equity. Whether or no the vendor was in possession of the land could make no difference. It would be sufficient if the thing sold was legally saleable. It might have no present actual or potential existence; it might rest in mere possibility; still it would be equitably an assignable chose in action. In the present case, the vendor Kalee Churn sold all his rights and interests in the decreed land—interests which had been clearly defined in the decree.

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The 5th January 1869.

Present:

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

Appellate Court—Evidence—Objections.

Case No. 2137 of 1868 under Act X. of 1859.

Special Appeal from a decision passed by the Judge of Tirhoot, dated the 16th May 1868, reversing a decision of the Assistant Collector of that District, dated the 20th November 1867.

Lowa Jha and others (Plaintiffs), *Appellants,*

versus

Bisseshur Singh (Defendant), *Respondent.*

Moonshee Mahomed Eusuff for Appellants.

Baboo Bhowanee Churn Dutt for Respondent.

Where evidence which was rejected by the Court of first instance is admitted at the appeal-stage, the Appellate Court is bound to state its reasons for admitting the evidence.

A defendant is entitled to take in the Appellate Court an objection which he had no opportunity of taking until the case was heard in appeal.

Glover, J.—THIS was a suit for recovery of enhanced rent after notice, the ground of enhancement being that the productive powers of the land had increased in consequence of the landlord's having erected a bund.

The defendant set up a pottah granted to him by the 3 annas 4 gundahs shareholders of the estate, which at the date of suit had still two years to run.

The first Court found for the plaintiff, but the Judge on appeal held that the pottah had been proved, and that the tenant was protected from enhancement during the period of his lease.

The point taken in special appeal is that the Judge has held the pottah to be proved on what is no legal evidence, and that in any case it could only hold good as regards the share of Zoolfekar Ali, a 1 anna 12 gundahs shareholder, and could not bind the owners of the remaining shares.

It appears that, after the first Court had decided the suit adversely to the defendant, an application for review was made on his behalf, on the ground that a deposition of Zoolfekar Ali had been found in another rent-case, in which he had admitted the genuineness of this pottah. The application was rejected; but the Judge on the regular appeal admitted this evidence, and decided on it in favor of the tenant. No other evidence was

adduced in support of the pottah. The Judge, we observe, has given no reasons for admitting this evidence at the appeal-stage, and after it had been rejected by the Court of first instance, and his judgment is, therefore, defective according to the ruling of the Privy Council in the case of Gunga Gobind Mundul, 4th March 1867 (7 Weekly Reporter, p. 21).

And with reference to the objection taken by the special appellant, that the pottah, even if admitted, could only bind Zoolfekar Ali, the Judge has declined to consider the point, on the ground that it had not been urged in the Court below.

Now, in the first Court, the plaintiff got a decree on the failure of the defendant to prove his pottah, and he had no opportunity of taking the objection referred to, until the case was heard by the Judge on appeal.

We think that the special appellant was clearly entitled to take the objection when he did, and that the Judge ought to have disposed of it. It is admitted that the only evidence in support of the pottah is the admission of one of the sharers of a fractional part of the estate; and this evidence, if receivable, cannot bind the remaining co-sharers, who are not shown to have had anything to do with granting the lease, or to have even known of its existence.

The case must go back to the Judge. He will first give his reasons for admitting the copy of Zoolfekar's deposition as evidence against the special appellant; and if he does admit it, he will only use it as against the party making it. The special appellant is the theekadar of the entire 16 annas of the estate, and is in any case (there being no other evidence in favor of the defendant) entitled to a decree for any portion of the property not covered by Zoolfekar Ali's share.

It has been urged upon us, as a cross-appeal by the special respondent under Section 348, that the Judge ought also to be directed to find as to the increase in the productive powers of the land; but this, we think, cannot be done at this stage of the case. The special respondent admits receipt of the notice, and therefore knew from the first the ground on which enhancement was sought; but he took no objection to the rates *quoad* the ground of notice, but contented himself with relying on his pottah. We therefore reject his application, and remand the case with reference to the remarks above recorded. Costs will follow the result.

The 5th January 1869.

Present:

The Hon'ble G. Loch and F. A. Glover, *Judges.*

Jurisdiction—Suit for enhanced rent—Stipulations in a kubooleut—Damages—Rent in kind—Act X. suits not summary.

Case No. 147 of 1868 under Act X. of 1859.

Regular Appeal from a decision passed by the Collector of Maldah, dated the 20th May 1868.

Nubo Tarinee Dossee and others (Plaintiffs), *Appellants,*

versus

Mr. J. J. Gray (Defendant), *Respondent.*

Baboos Onookool Chunder Mookerjee and *Anund Chunder Ghossal* for Appellants.

Baboo Juggodanund Mookerjee for Respondent.

In a suit for arrears of rent at an enhanced rate on a kubooleut in which defendant had agreed to pay a fixed rent for plaintiff's share of the estate, with a further stipulation that he was to measure and enhance the rents of the ryots, and pay over to the zemindar half the enhanced rent:

HELD that the suit was cognizable by a Revenue Court.

HELD that damages on account of the wanton destruction of trees, though stipulated for in a kubooleut, cannot be claimed as rent; but that a stipulation to supply a number of mangoes yearly is one to pay part of the rent in kind, and the value of the mangoes is realizable as rent in a Revenue Court.

Suits for rent under Act X. of 1859 are not summary suits, but, to all intents and purposes, regular suits only tried by Collectors.

Loch, J.—THIS suit has been brought for arrears of rent for 1271, 1272, and 1273. It appears that the defendant executed a kubooleut in favor of the plaintiff, agreeing to pay rent at the rate of 8,884 rupees for plaintiff's share of the Zemindary Shershahabad, &c. There was a further stipulation in that kubooleut that the defendant was to measure and to enhance the rents of the ryots, and of that enhanced rent he was to pay over half to the zemindar, and retain half for himself. He was also bound at the close of each year to render an account to the zemindar.

The present suit was instituted on the 2nd Bysack 1275, and the Collector has held that the claim for rent of 1271 is barred by limitation, the suit not having been brought within three years from the close of the Bengal year 1271; and he has further held that, as the suit is not brought for the jumma specified in the kubooleut, but for the amount of the enhanced rent realized from the ryots