Baboos Sreenath Doss and *Bhuggobutty Churn Ghose* for Respondent.

A suit for mesne-profits instituted after Act XIV. of 1859 came into force is subject to its provisions, although founded on a decree for possession in a suit which was instituted before the passing of that Act.

A regular suit for mesne-profits will lie after a suit for possession, if in the latter no question of mesne-profits was raised or decided.

Macpherson, J.—THE first ground taken by Mr. Allan for the appellant in this case is that six years' limitation will not apply in the present instance; because, although this suit was instituted in 1866, the former suit, which terminated with a decree for possession in favor of the plaintiff, was instituted long before the passing of Act XIV. of 1859. But it appears to us that the present suit having been instituted after Act XIV. of 1859 came into force is subject to the provisions of that law, and that that law alone will apply. Consequently, we think that in no case can the plaintiff recover mesne-profits for more than the six years preceding the institution of the suit.

The second ground of appeal is that the Deputy Commissioner is wrong in holding that the plaintiff cannot bring a regular suit for mesne-profits which fell due within the period from the institution of the suit for possession in 1851 to the execution of the decree in 1866.

The Deputy Commissioner relies upon a decision of the Madras High Court, reported at page 453, Stokes's Madras Reports. That case does not accord with decisions of this Court; and there is no doubt that, according to the principle laid down in the decision of the Full Bench in the case of Modhoo Soodun Lall *versus* Bhikaree Singh (4 Weekly Reporter, page 109, Miscellaneous Rulings), as also in various later decisions of this Court upon this point, a regular suit for mesne-profits will lie after a suit for possession, if in that suit no question of mesne-profits was raised or decided.

The plaintiff is entitled to a decree for such mesne-profits as may have accrued within six years prior to the institution of this suit.

The case must be remanded to the Lower Court, in order that it may ascertain the amount of mesne-profits. Any claim or statement made by the defendant as regards the value of, or profits realized from, the property will be admissible as evidence against him, though not conclusive.

Each party will bear his own costs of this appeal.

The 2nd June 1869.

Present:

The Hon'ble E. Jackson and Dwarkanath Mitter, *Judges.*

Settlements—Board of Revenue—Commissioners.

Case No. 2728 of 1868.

Special Appeal from a decision passed by the Additional Judge of Bhaugulpore, dated the 14th July 1868, reversing a decision of the Subordinate Judge of that District, dated the 28th February 1867.

Huro Lall Tewaree (Plaintiff), *Appellant,*

versus

The Collector of Bhaugulpore and another (Defendants), *Respondents.*

Messrs. J. W. B. Money and *J. S. Rochfort*, and *Baboos Ashootosh Chatterjee* and *Chunder Madhub Ghose* for Appellant.

Baboos Onookool Chunder Mookerjee, Juggadanund Mookerjee, and *Poorno Chunder Shome* for Respondents.

A settlement of resumed lakheraj land made by a Collector "subject to the orders of the Board of Revenue" may be set aside by that Board.

Under the Board's rules, a Commissioner has authority to set aside such a settlement, and is limited to no time in the exercise of his powers of revision.

Jackson, J.—IT appears to me that the decision of the Lower Appellate Court is correct. The agreements entered into between the Collector and the special appellants were distinctly declared by the Collector at the time and so stated in the agreements to be not final, but subject to the consent of the Board of Revenue. Those agreements were subsequently brought by the Commissioner of the Division to the notice of the Board of Revenue. The Commissioner was of opinion that the arrangements proposed by the Collector were not proper arrangements, and the Board of Revenue, concurring with the Commissioner, refused to sanction the agreements entered into by the Collector, set them aside, and ordered other agreements to be made. It is said that great delay occurred in the action taken by the Commissioner and the Board of Revenue, and it is also said that the Collector, in fact, never intended that the agreements entered into by him should be subject to the consent of the Board of Revenue; that the agreement was drawn out in an old form, which had been long abandoned, and in this way alone had the words "subject to the consent of the Board of Revenue" crept into it by accident; that, in

fact, the Collector never submitted his proceedings for the sanction of that Board, but that, under the rules promulgated by the Board itself, the Collector had full authority to enter into agreements of this description of his own accord, and without obtaining the sanction of the Board. The Lower Appellate Court has rejected all these objections, on the ground that the Board of Revenue had full power *under the law* to interfere in the acts of the Collector, and that, no time having been laid down in the law within which it was to exercise those powers, it could interfere at any time.

The agreements in this case referred to the settlement of some lakheraj land which had been resumed. It had been settled from time to time with different parties, but the settlement had come to an end, and it was necessary to re-settle the land. The ex-lakherajdar was the person entitled to the settlement. He put in a petition asking for a settlement at lower rates than had been proposed. The Collector considered that this petition was a refusal to take the settlement at the rates proposed. The Collector accordingly entered into a settlement with the special appellant. The ex-lakherajdar, after some delay, brought the matter to the notice of the Commissioner. That officer and the Board of Revenue considered that the ex-lakherajdar had not refused the settlement, but was entitled to it, and ordered the settlement to be made with him. The special appellant has now brought this suit to recover possession of the resumed estate, alleging that the agreement with him was final, and could not be set aside.

As the settlement made with the special appellant was distinctly declared to be subject to the orders of the Board of Revenue, and it is not shown or proved in any way that that clause of the agreement crept into the settlement by mistake, we might decide upon that alone that the Board of Revenue had full power to interfere. If the rules of the Board of Revenue are to be looked to, then the Commissioner had full power to interfere, and did interfere, in accordance with those rules, though it may be that, as there had been some delay before the case was brought to his notice, and as the agreement distinctly referred to the consent of the Board of Revenue, he preferred to obtain the Board's consent before he passed orders in the case. The argument that, if the Commissioner did interfere, he was bound to interfere within one month, because that is the period laid down for appeals to him, cannot, in my opinion, stand. It may be that appeals must be preferred within one month, but no time is laid down in the rules within which the Commissioner was bound to exercise his powers of revision, and it was these powers of revision which he exercised in this case, and not his powers on appeal. Whether, then, the Board of Revenue had power itself to interpose in the settlement or not, it does not seem to be denied that it had authority to make rules under which settlement-officers were to conduct settlement-proceedings; and, even under those rules, the orders passed by the Commissioner were legal. The Commissioner had authority to set aside the settlement, and did do so. The plaintiff must fail in his suit even upon this ground. It is not necessary under these circumstances to examine the law laid down by the Judge as regards the powers of the Board of Revenue to set aside such a settlement as this. We dismiss this appeal with costs.

Mitter, J.—I concur. The plaintiff is bound by the terms of his lease, and under those terms the Board had full power to interfere.

The 2nd June 1869.

Present:

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

Declaratory decree—Cause of action—Joint Hindoo property—Onus probandi.

Case No. 2951 of 1868.

Special Appeal from a decision passed by the Judge of Tirhoot, dated the 19th June 1868, affirming a decision of the Subordinate Judge of that District, dated the 17th December 1867.

Gopee Lall (Plaintiff), *Appellant,*

versus

Mohunt Bhugwan Doss and others (Defendants), *Respondents.*

Mr. C. Gregory and *Baboo Khettur Mohun Mookerjee* for Appellant.

Baboos Kalee Mohun Doss and *Romesh Chunder Mitter* for Respondents.

The fact of joint property standing upon the Collector's register in the name of the elder brother is no slur on the title of the younger, and no ground for a suit on the part of the latter for declaration of title.

In a suit to recover possession of a share of joint property sold in execution, on the ground that the judgment-debtor (plaintiff's brother) was the owner of only