On turning to the plaint, we find that this was a suit simply for rent, and not for damages. The defendant is sued on the footing of a ryot, and the plaintiff, prior to bringing the suit, appears to have taken proceedings under Section 10 of Act VI. of 1862, which Act, under Section 21 of the said Act, is to be read with, and taken as a part of, Act X. of 1859. Section 10 of the said Act contemplates persons entitled to receive rent of an estate or tenure, and the proceedings are as between landlord and tenant. The defendant does not set up that he holds in his own right by purchase of a proprietary right. He holds certain lands as *zerat* lands in his exclusive possession, and it follows, therefore, that he can only hold these lands as a tenant liable to pay rent to the proprietors according to their quotas.

The suit, therefore, appears to us to be one for rent as between landlord and tenant, and we think that it must be tried under Act X. of 1859, and not in the Civil Court.

The decision of the Judge is affirmed, and the special appeal dismissed with costs.

The 2nd June 1869.

Present :

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

Onus probandi—Rent-suit.

Case No. 538 of 1869 under Act X. of 1859.

Special Appeal from a decision passed by the Officiating Judge of Gya, dated the 17th November 1868, affirming a decision of the Deputy Collector of that District, dated the 18th June 1868.

Zimut Hossein and others (Defendants), *Appellants,*

versus

Kuneez Fatima (Plaintiff), *Respondent.*

Messrs. R. E. Twidale and *C. Gregory* for Appellants.

Baboo Kalee Mohun Doss and *Moonshee Mahomed Yusuff* for Respondent.

In a suit for rent where a deed of sale is the foundation of plaintiff's right, he is bound to prove the deed even if it is not objected to in defendant's written statement.

Kemp, J.—The only ground in special appeal which we think it necessary to notice is the first ground, namely, that the deed of sale, which is the foundation of the plaintiff's right, not being proved, the claim ought to have been dismissed, and that the failure to object to it in the written statement is no reason at all for exempting the plaintiff from proving it, more especially as Hosseinee, the plaintiff's alleged vendor, is no party to the present suit, and any decree for rent passed against the special appellant is not binding on her. Further, that this point was not tried by the Lower Appellate Court, although it was taken in the grounds of appeal, and the attention of the Court was drawn to it. We think that this contention is correct. The first issue in the Court of first instance is whether Mussamut Hosseinee and the plaintiff obtained possession of the share in question or not. The Deputy Collector did not try this question on the ground that no issue was raised. It is true that he found on the evidence that the zur-i-peshgee to Hosseinee and the kubooleuts of the sub-lessees of Hosseinee were proved; but there has been no finding as to whether the plaintiff's purchase from Hosseinee has been established or not. Hosseinee has not been made a party to this suit, and therefore the finding will not bind her, and it may be that, in a suit brought for rent by her, the defendants would have to pay twice over. We therefore remand the case to the first Court to try the issue whether the purchase by the plaintiff from Hosseinee has been established or not.

The parties to be at liberty to adduce evidence on the above point. Costs to follow the result.

The 2nd June 1869.

Present:

The Hon'ble A. G. Macpherson and E. Jackson, *Judges.*

Possession—Mesne-profits—Limitation—Right of action.

Case No. 23 of 1869.

Regular Appeal from a decision passed by the Deputy Commissioner of Gowalparah, dated the 27th November 1868.

Protap Chunder Buroonh (Plaintiff), *Appellant,*

versus

Ranee Surno Moyee (Defendant), *Respondent.*

Mr. R. T. Allan and *Baboos Onookool Chunder Mookerjee* and *Tarinee Churn Bhuttacharjee* for Appellant.

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