*Baboo Sham Lall Mitter* for Appellants.
*Baboo Sreenath Doss* for Respondent.

The refusal of one of the parties to a contract to carry out a verbal agreement to register the deed not contained in the contract, does not give the other party a right to put an end to the contract. His proper remedy is to apply to enforce registration under the Registration Act.

*L. S. Jackson, J.*—It appears to me that the plaintiff in this case had no cause of action and that the decision of the Court below upon his plaint is erroneous and must be set aside.

The plaintiff, it is alleged, lent a sum of money to the defendant on a bond, in which bond it was stipulated that certain immoveable property belonging to the defendants was pledged as security for the re-payment of the loan with interest. It was alleged that the defendants also agreed verbally to have this document registered; and the evidence shows that the document was in fact taken to the registry office, but that as the defendants did not appear, and their mooktear did not consent to registration, the document was returned to the plaintiff, although there is no formal note by the Registrar refusing to register endorsed upon it. Upon this the plaintiff considers that the defendant having broken the contract, he is entitled to put an end to it, and he sues to recover the money lent, although the due date, which is in the month of Srabun 1277, has not arrived.

Both the lower Courts consider that the refusal of the defendants to register gave the plaintiff a cause of action, which entitles him to recover the money lent. It appears to me that it did not, and that the conduct of the defendant (of which the account given is somewhat obscure) was such as would entitle the plaintiff to come before the Zillah Court, on the Registrar refusing to register, and under Section 84 of the Registration Act, apply by petition to establish his right to have such document registered.

It cannot be said that the refusal of one of the parties to the contract to carry out a verbal agreement not contained in the contract, enables the other party, at his option, to set aside the contract *in toto*.

It may be contended that the period allowed by law for registration of the document having expired, the plaintiff has now lost his security. That, it appears to me, will not enable the Court to grant the plaintiff the relief which he asks for in this suit. I think he has lost, by his own negligence, his security which the bond originally provided, and that if he is now reduced to a bare suit for his money when it becomes due, he has only himself to blame.

The judgment of the Courts below must be reversed with costs.

*E. Jackson, J.*—I also think that the judgment of the Court below must be reversed. I think the plaintiff's proper course was to have enforced registration of the bond.

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The 2nd June 1870.

*Present:*

The Hon'ble Sir Charles Hobhouse, *Bart.*, *Judges.*

**Appeal from order under Section 9 Act VI. (B. C.) 1862—Stamps.**

In the matter of

Puriag Bhuggut, *Appellant,*

*versus*

W. M. Donzelle, *Respondent.*

*Baboo Luckhee Churn Bose* for Appellant.

An appeal from an order of a Lower Appellate Court on an application under Section 9 Act VI (B. C.) of 1862, not being otherwise provided for by the Court Fees' Act, may be admitted on a 6 annas stamp.

*Note by the Deputy Registrar.*—This is an appeal from an order of the Lower Appellate Court on an application under Section 9 Act VI of 1862 (B. C.) The question whether such an appeal will lie to this Court has been referred to the Full Bench and is now pending its orders.

The Court Fees' Act has apparently not provided for an appeal under that Section; but for an application the fee leviable is set down in Article 13 Schedule II as 5 rupees. If, therefore, for an application under Section 9 Act VI of 1862 (B. C.), 5 rupees is the fee leviable, the fee for an appeal (if one be held to lie to this Court from an order on such an application) cannot, it is presumed, be less than that amount.

Lay before the 3rd Bench for orders.

*Hobhouse, J.*—I think the appellant is entitled to the benefit of the proviso in Schedule I, and that this being an appeal "not otherwise provided for" by the Court Fees' Act, must be let in on a 6 annas stamp.

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The 3rd June 1870.

*Present :*

The Hon'ble Sir Richard Couch, *Kt.*, *Chief Justice*, and the Hon'ble F. B. Kemp, *Judge.*

**Review—Remand—Re-hearing.**

Case No. 2601 of 1869.

*Special Appeal from a decision passed by the Judge of East Burdwan, dated the 2nd August* 1869, *affirming a decision of the Moonsiff of Bamunarah, dated the 25th February* 1869.

Makhun Kooer and another (Defendants) *Appellants,*

*versus*

Tincowree Dutt and another (Plaintiffs) *Respondents.*

*Baboo Oopendro Chunder Bose* for Appellants.

*Baboo Gopenath Mookerjee* for Respondents.

Where a review had been granted for the purpose of seeing whether a chittah ought not to be used, and the case was remanded for a re-hearing, the party was held to be concluded from objecting that the chittah was improperly made use of upon the re-hearing.

*Couch, C. J.*—In the case, the plaintiff's suit having been dismissed by both Courts there was an application for a review, and the ground upon which it was applied for was, as stated in the notice issued on the application, in order to ascertain what effect the chittah would have on the plaintiff's case. The Court granted the review, and the case was remanded for re-trial. We think that it is too late now for the special appellants to object that the Courts below ought not to have made any use of that chittah. It has been held by this Court in several cases that a decision of a Lower Appellate Court reversing a first Court's decision and directing a remand is not an order within the meaning of Section 363 of Act VIII of 1859, but without saying that the correctness of an order of remand may not be impeached when the final decree comes before the Court on a special appeal, (Forbes *versus* Ameeroonissa Begum, 10 Moore's Indian Appeals, page 340)* we think that this is a case in which the party is concluded from objecting that the chittah was improperly made use of by the Court upon the re-hearing of the case, the review having been granted for the purpose of seeing whether that chittah ought not to be used, and the Court having upon the review directed that the case should be re-heard.

It would seem that both the Courts below in making use of the chittah have now come to a finding upon the question of fact in favor of the plaintiff, instead of the former finding which was adverse to him, and this certainly shows that the chittah did throw very considerable light upon the matter in dispute between the parties. The first Court says—"There is no doubt that the "aforesaid measurement had taken place "before respectable men of the village; "moreover the said chittah has been ad-"mitted by the Appellate Court and the "decision has become final; consequently the "said chittah must be regarded as a valid "document in respect of the title of Binda-"bun to the disputed fishery, and the "evidence of the five witnesses on behalf of "the plaintiff with respect to the disputed "arrah having been before in Bindabun's "occupancy must be considered to be suffi-"cient evidence on that point, for the said "evidence is corroborated by Court papers." Now, that is a very distinct finding upon this matter, and the Appellate Court finds to the same effect. The Judge there says that having inspected the map drawn by the Ameen and taken his report into consideration, he finds that "the arrah regard-"ing which this dispute exists lies in the "portion indicated by the chittah of Bin-"dabun's jote and that there is no fishery "at the spot which the appellant indicates "as the site of Bindabun's arrah. Under "these circumstances, and seeing that the "appellant has not proved by any satisfac-"tory evidence that he holds the julkur "of the tank near which this arrah is "situated, and as the respondent has proved "his possession by means of witnesses, "there is no necessity to interfere with the "decision passed by the Moonsiff." It might have been more satisfactory if this gentleman had gone somewhat more fully into this matter, and had shown that he had

* 5 W. R., Privy Council, p. 47.