substantially correct and unimpeachable upon special appeal. It is quite clear that the defendant obtained possession of the property, which is the subject of suit, under a lease from the plaintiff; and, as long as the relation which arose out of that issue subsisted, the defendant was bound to pay to the plaintiff the rents reserved therein. The defence set up was that the plaintiff had terminated the relation which originated in this lease by taking *seer* possession of the property covered by it. If this were so, no doubt it would be a complete answer to the claim of the plaintiff for rents alleged to have accrued due after the period of time at which he had taken possession. The Judge is quite right, we think, in the view which he took, that the burden of proving that the relationship of landlord and tenant had come to an end in this way lay upon the defendant, who alleged that it had so come to an end.

The Lower Appellate Court has found upon the evidence that no such termination of the relation has been effected; the lease is still subsisting, and that, therefore, the defendant is bound to pay the rents to the plaintiff.

The Judge of the Lower Appellate Court makes the remark that possibly the defendant has abstained himself of late from collecting the rents from the ryots, and in that sense may possibly have given up the holding. But he cannot, by any act of his own, unless it is justified by the terms of his lease or by the conduct of his landlord, relieve himself from the obligation which the original contract has placed upon him. And that appears to have been the view of the matter taken by the Judge.

It has been urged before us in argument that at any rate the plaintiff had, during the period for which he is seeking these rents from the defendant, made some collections from the ryots. If that assertion were correct, no doubt the money which he so got would, inasmuch as it ought to have been paid by the ryots to the defendant, rightly be considered as money belonging to the defendant, and, in this suit, the defendant would have a right to ask that this money should be set off against the plaintiff's claim for rent. He has not made such a request in so many terms. But, if there was any ground for considering that the plaintiff had money of this sort belonging to the defendant in his hands, we think there would be no difficulty in giving the defendant the benefit of it in this suit. But, so far as we understand the judgment of the Lower Appellate Court, the Judge is clearly of opinion that the defendant has failed altogether to prove that the plaintiff has made any such collections from the ryots. Possibly the ryots have paid money into the Moonsiff's Court in the name of the plaintiff. If that be so, there is no reason pointed out why the defendant should not yet obtain that money. But he has no right of set-off against the plaintiff's claim in this suit, unless he makes out that that money has actually come into the plaintiff's hand.

This appeal must be dismissed with costs.

The 4th December 1873.

Present:

The Hon'ble F. A. Glover, *Judge.*

Evidence Act, s. 73—Signatures.

Case No. 902 of 1873.

Special Appeal from a decision passed by the Judge of Midnapore, dated the 30th January 1873, reversing a decision of the Moonsiff of Gurbetta, dated the 18th September 1872.

Tara Pershad Tangee (Defendant), *Appellant,*

versus

Lukhee Narain Paurai and others (Plaintiffs), *Respondents.*

Baboo Bungshee Dhur Sen for Appellant.

Baboo Bama Churn Banerjee for Respondents.

Where certain ryots swore that they got their pottahs from the hands of the person who professed to sign them, this was *held*, under the Evidence Act, section 73, as "proving, to the satisfaction of the Court," that the signatures were those of the lessor.

Glover, J.—THE question in this case is whether the plaintiff, who sued for arrears of rent at the rate of Rs. 23 a year, has

proved the kubooleut which he said the defendant had given him.

The Judge has found that he has proved it.

It is objected to this finding that the Judge has considered the kubooleut proved, because he has first found that the defendant's pottahs are not proved, and that he has found those pottahs not proved upon what is not receivable evidence.

I do not think it is quite correct to say that the Judge found the kubooleut proved, because the pottahs were not proved. He has found the kubooleut, as it seems to me, proved from the evidence of the subscribing witnesses, for he speaks of having weighed the evidence on each side. No doubt, he considered the question of the defendant's pottahs at the same time; and I think he did that out of a desire to see that the ryot-defendant had every chance given him to support his side of the case; and if the pottahs had been proved to be genuine, they would have been very strong evidence against the kubooleut, inasmuch as no man with these pottahs in his hands would have been at all likely to give a kubooleut for a large increase of rent.

Then, as to the objection that the Judge found against these pottahs upon what was not receivable evidence, the Judge says that, in order to test the validity of these pottahs, certain other ryots, who swear to having received pottahs from the same grantee, were called upon to give evidence, and to produce their documents that they did so, and, after having sworn that the pottahs they put in were the ones they got from the landlord, a comparison of the signatures was made between the two documents, and it was found that the signatures on the pottahs of these ryots were as different as possible from the signature in the pottahs put in by the defendants. These witnesses swear that they got their pottahs from the hands of the person who professed to sign them, and I think that this, under section 73 of the Evidence Act, might be taken as "proving, to the satisfaction of the Court," that the signatures on these documents were those of the lessor.

The special appeal must be dismissed with costs.

The 4th December 1873.

Present:

The Hon'ble F. A. Glover, *Judge.*

Remand—Re-trial—Evidence.

Cases Nos. 1194 and 1195 of 1873.

Special Appeals from a decision passed by the Additional Subordinate Judge of East Burdwan, dated the 11th March 1873, affirming a decision of the Moonsiff of Cutwa, dated the 31st December 1872.

Gudadhur Dutt and another (Defendants), *Appellants,*

versus

Shushee Monee Dossia (Plaintiff), *Respondent.*

Baboo Umbika Churn Banerjee for Appellants.

Baboo Mohendro Loll Mitter for Respondent.

Where a suit was remanded by the Lower Appellate Court for a "re-trial," the intention of the order of remand was held to be that the whole case was to be gone into *de novo*, the plaintiff being allowed to prove her case in any way she could.

Glover, J.—THESE were suits for rent for the years 1278 and 1279. The plaintiff claimed at the rate of 28 rupees and 14 annas; the defendants admitting the tenancy alleged that the rent was only 27 rupees 11 annas.

The Moonsiff, in the first instance, found that the plaintiff had not proved the rate of rent claimed by her, and that the defendants had on their part shown that 27 rupees 11 annas was the correct rent; he therefore dismissed the suit.

The Judge, on appeal, remanded the case for a new trial, making certain observations as to the difficult position of the plaintiff, who was a new proprietor of the estate by purchase, and finding fault somewhat with the Court below for not having allowed her certain indulgences in the way of summoning witnesses, and procuring the documents by which it was supposed that she could have substantiated her claim. The Judge remarks in his order of remand that it was a proper case for a re-trial, and that this was to be held, after giving plaintiff full opportunity, to call for the ex-proprietor's zemindaree-papers and any witnesses whom the conduct of Banee Madhub Ghose had made it necessary to hear.