

We are restricted by the certificate to the point of limitation. The plea now urged by appellant's pleader is one of *fact*, and cannot be admitted.

We amend the decision of the additional judge by excluding from its operation all the rents of 1228 and 1229 *fuslee*. Costs chargeable to the parties rateably.

The 3rd January, 1850.

PRESENT: SIR R. BARLOW, BART., AND J. R. COLVIN, ESQ., *Judges*,
J. DUNBAR, ESQ., *Officiating Judge*.

CASE NO. 333 OF 1848.

Special Appeal from a decision passed by Captain Hannyngton, Deputy Commissioner of Hazareebaugh, January 8th, 1848; reversing a decree passed by Captain Richard Ouseley, Principal Assistant Agent, June 26th, 1847.

ASANATH TEWAREE AND OTHERS, *Appellants (Defendants)* v. PURSHAD TEWAREE, FOR SELF AND ANOTHER, *Respondents (Plaintiffs)*.

[Procedure—Special appeal—Act III of 1843—Certificate not specifying point on which appeal is admitted—Appeal not triable.]

A special appeal cannot be tried upon a certificate not showing upon what particular point, coming within the provisions of Act III of 1843, the petition has been admitted.

Wukeel of Appellants—C. Glas.

Wukeels of Respondents—Ameer Ali and Sumbhoonath Pundit.

THIS case was admitted to special appeal, on the 20th May 1848, under the following certificate recorded by Mr. Rattray :

' I ' On the 13th April 1821, Musst. Sumitra, the widow of Kishenmun Tewaree, then in possession of her husband's (*divided*) share of the villages of Kuthinga and Duswunt, sold the same to defray the *suradh*, or funeral obsequies of her husband.

' On the 24th June 1839, 18 years after the sale, the present suit was instituted by the brothers of Kishenmun, to succeed to the villages, as heirs at law,—the widow Sumitra having died some 7 years before. The principal assistant dismissed the suit under the statute of limitation; but the deputy commissioner, in appeal, reversed the decision, on the ground of the cause of action having arisen on the death of the widow, who had a life interest, with right of occupancy in the lands, and not on the date of sale.

' I do not find that any suit has been brought to cancel the sale, though there were two orders passed in this court, one on the 21st February, and one on the 15th May 1838, directing such a measure, as the proper mode of proceeding. Besides which, if the property was sold as asserted, and which I do not find denied, to meet the funeral expenses of the late owner, the sale was legal; and, independently of judicial *laches* on the part of the claimant, must be upheld.'

JUDGMENT.

The terms of this certificate are so general, that we are unable to determine upon what point, coming within the provisions of Act III of 1843, the petition has been admitted. We cannot, therefore, as the case is now before us, do otherwise than dismiss the appeal. Order accordingly.