

legal representatives of the deceased, with the liability under the bond. This omission cannot be deemed an act of inadvertence; it was done to serve the plaintiffs' own purposes, and they must abide the consequences.

Further, as the appellants are exonerated from personal responsibility by the admission of the respondents' pleader, there is no person before the Court against whom the suit can be prosecuted, and it has therefore become extinct. If the Court should permit the plaintiffs to put in a supplemental plaint in this stage of the case, making the omitted person a defendant, the suit becomes to all intents and purposes a new suit. Such a supplement would be wholly beyond the scope of section V, Regulation IV of 1793.

For the above reasons the plaintiffs should, in my judgment, be nonsuited with costs.

The 11th January, 1853.

PRESENT: J. DUNBAR, ESQ., *Judge*, A. J. M^r MILLS AND
R. H. MYTTON, ESQRS., *Officiating Judges*.

CASE NO. 308 OF 1851.

Regular Appeal from the decision of Moulvee Mahomed Nazim Khan, Additional Principal Sudder Ameen of Dacca, dated 17th May, 1851.

MRS. SOPHIA KNOTT (*Defendant*), *Appellant* v. RAMKISHEN DAS AND
OTHERS (*Plaintiffs*), *Respondents*.

Vakeel of Appellant—Mr. E. Colebrooke.

Vakeel of Respondents—Baboo Ramapersaud Roy.

See the preceding case. [9 S.D.A.R. 46, *supra*.]

SUIT laid at rupees 340-0-6, on account of costs awarded against the appellant.

This appeal is connected with No. 307; Mrs. Knott, appellant, urges that as she was exonerated from responsibility under the decree, it was unjust to saddle her with costs.

Messrs. J. Dunbar and R. H. Mytton.—As on the appeal of Mrs. Ellias and Mr. Mitchoo we have this day remanded the case to be tried *de novo*, we think it would be premature to pass any final order regarding costs at this stage. Annulling the decision of the principal sudder ameen, we direct him on re-trial of the case to consider the question of costs.

[52] Mr. A. J. M. Mills.—The principal sudder ameen exonerated the appellant from responsibility, and as the plaintiffs have not appealed against this part of the decree, I think they should be made chargeable with the costs of the appellant.

The 11th January, 1853.

PRESENT: SIR R. BARLOW, BART., AND W. B. JACKSON, ESQ., *Judges*.

PETITION NO. 645 OF 1852.

[*Limitation—Minority of plaintiff—Omission to consider plea of minority to save bar of limitation—Remand.*]

A case remanded; plea of minority in avoidance of application of law of limitation not having been considered by the Judge,

IN THE MATTER OF THE PETITION OF RAM RAJA, PETITIONER, filed in this court on the 15th September, 1852, praying for the admission of a special appeal from the decision of Mr. S. Bowring, officiating judge of Chittagong, under date the 12th June, 1852, reversing that of Moulvee Unwur Alee, Moon-siff of Chukla Sundeep, under date the 15th January, 1852, in the case of Ram Raja, plaintiff, *versus* Musst. Kalabuttee and others, defendants.

It is hereby certified, that the said application is granted on the following grounds :

The suit is for possession of property ; and the plaintiff in his plaint alleges that he attained majority in 1257, only one year before the suit was instituted, in 1258. The Judge dismisses the claim on the score of lapse of time, the defendants having held possession since 1836, before suit, but he entirely omits to take into consideration the plea of minority. It is evident that if the plaintiff attained majority one year before suit was brought, his suit is not barred by lapse of time, unless there was lapse of time during the incumbency of his father, which is not stated.

We therefore reverse the decision, and remand the case to the Judge that he may pass a new decision on the merits of the case, with due regard to the plea of minority above-mentioned.

[53] *The 12th January, 1853.*

PRESENT : J. DUNBAR, ESQ., *Judge* AND
A. J. M. MILLS AND R. H. MYTTON, ESQRS., *Officiating Judges.*

CASE NO. 133 OF 1850.

Regular Appeal from the decision of Moulves Abdool Alee, Principal Sudder Ameen of Rajshahye, dated 14th January, 1850.

MR. W. MCIVOR (*Defendant*), *Appellant v. E. W. HUDSON AND OTHERS*
(*Plaintiffs*), *Respondents.*

[*Transfer of property—Pottah from gomastah of ijaradar—Grantee of pottah has no title beyond ijaradar's lease—Evidence Primary evidence available—Secondary evidence inadmissible—Possession without title—Disturbance—Peaceful possession—No right to mesne profits.*]

Pottahs from the gomastah of an ijaradar can convey no title beyond the ijaradar's lease ; secondary evidence is inadmissible when primary was available.

It is no answer to a claim to the fruits of land in possession without a sufficient title, that the possession was peaceful.

Vakeel of Appellant—Baboo Ramapersaud Roy.

Vakeel of Respondents—Mr. J. G. Waller.

SUIT laid at rupees 5,381-8-5.

The plaint sets forth that the plaintiffs hold pottahs for 334 beegahs of land from Nujeeb Mundul and other ryots, and that for a further area of 466 beegahs, ryots executed shattyes in their favor ; that Mr. Clark, the proprietor of Bahadoorpore factory, taking a dur-ijara from Bhowanipersaud Roy, disputes arose, which resulted in the magistrate awarding possession to plaintiffs under Act IV of 1840, on the 2nd July, 1847. Ultimately, however, the sessions judge reversed this decision, on 4th December, 1847. Previous to this decision, however, they assert that in October and November, 1847, they had cultivated and sown 125 beegahs.