

justified in giving to a mere statement of consent on the part of Anyábá, made under such circumstances, the force which would be necessary in order to found on them a cause of action not otherwise existing.

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DESHMUKH.

The only question to be decided, therefore—as the case comes under the provisions of Cl. 13, Sec. 1. of Act XIV. of 1859—is, whether the field, which the plaintiff alleges to have been in his possession down to 1862, or thereabouts, rent-free (the assessment due on it being paid by the defendants), has been so held by him within twelve years preceding the suit, as part payment of the alleged share in the *deshmukhi watan* due to him. On this point the Judge has not recorded a finding, and we, therefore, reverse the decree, and remand the case that this issue may be decided, and a new decree passed. Costs to follow the final decision.

*Decree reversed and suit remanded.*

*Special Appeal No. 213 of 1868.*

April 2.

NARSINVA'CHA'RYA *et al.* ..... *Appellants.*  
SVA'MI RA'YA'CHA'RYA ..... *Respondent.*

*Stamp—Varshásan—Annual Allowance—Valuation—Stamp Act (X. of 1862), Schedule A, Sec. 2, and Act XXVI. of 1867, Schedule B, note (b).*

In a suit for a declaration of right to an annuity (*varshásan*), it was held that the stamp for the petition of special appeal should be regulated by the market value of the annuity, and that "*primá facie*" ten times the amount of the annuity may be assumed to be its market value, as enacted for analogous agreements by Sec. 2, Schedule A, Act X. of 1862.

IN this case the original claim was to establish the respondent's right to a *varshásan* or annual allowance of Rs. 192. In both the original and appeal suits the claim was valued at ten times the amount of one year's allowance, but in the petition of special appeal it was estimated at the amount of a single annual payment.

The Registrar declined to receive the petition without an order from the Court.

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*Dhirajál Mathurádas* contended, for the appellant, that by the new Stamp Act, XXVI. of 1867, "immoveable property" includes land and every benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth; and "moveable property" means "property of every description except immoveable property." A *varshásan* or annual allowance, therefore, is moveable property according to this Act. Cl. b (1) of the "Special Rules for the Bombay Presidency" given under Cl. 11, Schedule B to Act XXVI. of 1867, does not apply, because the suit is not for moveable property *other than money*. The suit is, therefore, for money, and Cl. b (3), under the said rules, applies to this case.

PER CURIAM (NEWTON, Acting C.J., and TUCKER, J.) :—The present is a suit for a declaration of right to an annuity or annual allowance, and the question which we have to determine is, what is the stamp necessary for a petition of special appeal in such a case. The Stamp Act contains no specific regulation for the valuation of a claim of this description, but the general rule for all claims which are not for a specific sum of money is, that such claim should be estimated at the market value of the subject-matter of the suit at the date of filing the plaint (note [b] to Schedule B, Act XXVI. of 1867.) In Schedule A, Cl. 2 of Act X. of 1862, we find that the stamp required for an agreement for an annual or periodical payment shall be the same as for a bond for the amount of ten years' payment. In this part of the stamp law we have, therefore, an intimation that, in the opinion of the Legislature, ten times the amount of a particular annual payment is a fair representation of the value of that payment, and we think that by analogy we are entitled to assume that in the present case ten times the value of the annuity, which forms the subject-matter of the suit, is a fair representation of the value of the claim until the contrary be shown. We, therefore, consider that the petition of special appeal required a stamp for a sum equivalent to ten times the value of the annuity claimed, and that the Registrar was right in refusing to receive the application on a lower stamp.

The late Court of Šadr Adálat recommended the introduction of a special clause in the Stamp Act, declaring that claims to periodical payments should be valued at ten times the amount of the particular payment claimed, but this recommendation seems to have been overlooked (*vide* Circular letter No. 1706 dated the 2nd of July 1864, p. 4).

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CHA'RYA.

*Application to be returned.*

*Special Appeal No. 38 of 1868.*

April 6.

KISANDRA'M valad HIRA'CHAND ..... *Appellant.*  
JETHIRA'M valad MAGNIRA'M..... *Respondent.*

*Small Cause Court—Title to Land—Special Appeal.*

Where, in a suit cognisable by a Court of Small Causes, in order to determine the question at issue between the parties, it was *necessary* for the court of appeal in the first instance to determine a question of title to land (which had been raised by the Munsif) : *Held* that a special appeal lay to the High Court, though the court below had omitted to determine such question of title.

THIS was a special appeal from the decision of J. L. Warden, Assistant Judge at Ahmednagar, in Appeal Suit No. 172 of 1867, amending the decree of the Munsif of Sinar.

The action was brought by Jethiráam to prove his right to a half-share in a crop of *bázari* grain, which was attached and sold, in pursuance of a decree obtained by Kisandrám, the first defendant, against Khandu, the third defendant. The land was bought by Bápu, the second defendant.

The defence was, that there was no partnership between Khandu and the plaintiff, and that the whole crop belonged to Khandu.

The Munsif found for the plaintiff, on the ground that it was proved that he bought the land in question at an auction sale, and took Khandu into partnership to cultivate the field.

In appeal, the Assistant Judge laid down the issues for decision to be—' 1st, Can Jethiráam prove his right to half of