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this ground, the plaintiffs are entitled to claim exemption from the operation of Act XXIII. of 1871.

The Assistant Judge has found that on the merits the plaintiffs are entitled to succeed. The respondent has not appealed against this finding, nor filed any statement of objections under Section 348 of Act VIII. of 1859. We must, therefore, reverse the decrees of the Courts below, and enter judgment for the plaintiffs, with costs on the defendant throughout.

Decree reversed.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 277 *of* 1868.

1868. August 6.

JOTI BHIMRA'V (ORIGINAL PLAINTIFF, SPECIAL APPELLANT) *v.* BA'LU BIN BA'PUJI AND ANOTHER (ORIGINAL DEFENDANTS, SPECIAL RESPONDENTS).

Mirás—Razinámá—Abandonment of mirás right—Ejectment.

A *Mirásdár* who has given in a *razinámá* is entitled to eject the tenant put in possession of his *mirás* lands by the Collector, provided he sue within the period of limitation, and the *razinámá* contain no stipulation whereby he expressly abandons his *mirás* rights.

THIS was a special appeal from the decree of the Acting Assistant Judge of Satara. The plaintiff, a *Mirásdár*, passed a *razinámá* resigning his *mirás* lands. The Collector thereupon put the defendants in possession of the lands so resigned. In a suit afterwards brought by the plaintiff to recover possession of these lands, the Assistant Judge held that a *Mirásdár* could not oust a tenant who had been put in possession by the Collector, and accordingly decreed in favour of the defendants.

The special appeal was heard by WARDEN and GIBBS, JJ.

PER CURIAM:—The Court consider that the Assistant Judge was in error in holding that a *Mirásdár* cannot oust a tenant who has been put in possession by a Collector (*vide Salu* v. *Ravji*, 1 Bom. H. C. Rep. 41). Not only has this Court decided to the above effect, but it has also held that a *Mirásdár* who has given in a *razinámá* has the right to recover his land if he

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sues within the period of limitation, unless in that document it is expressly stipulated that he has abandoned his *mirás* right. The decree of the Assistant Judge is reversed, and the case remanded for re-trial on its merits.

The Court reverses the decree of the Acting Assistant Judge, dated 4th of March 1868, and remands the cause for re-trial with reference to the above judgment. Costs to follow final decision.

Note.—It has been found impossible, after the interval of eight years that has elapsed since the delivery of the above judgment, to ascertain all the facts of the case, but from the expressions used in the judgment it would appear that the *razinámá* was not before the Court at the argument of the special appeal, and that the remarks as to the effect of the wording of the *razinámá* may be said to have been extra-judicial. A different opinion as to the effect of the wording of the *razinámá* was expressed in the more recent case, argued and decided directly on this point, of *Tarachand* v. *Lakshman*, reported *supra*, p. 91.

[ORIGINAL CIVIL JURISDICTION.]

Suit No. 254 *of* 1872.

1875. August 31.

CHOVA' KARA' (PLAINTIFF) *v.* ISA' BIN KHALIFA (DEFENDANT).

Practice—Pleading—Written statement—Variance between the case set up in the defendant's written statement and that made by him in evidence at the trial—Civil Procedure Code (Act VIII. of 1859*), Section* 123.

Section 123 of the Civil Procedure Code (Act VIII. of 1859) contemplates that a defendant shall, in his written statement, set forth the case he intends to make at the trial.

The rule followed in *Eshenchunder Singh* v. *Shamachurn Bhutto* (11 Moore I. A. 7), *Mohummud Zahoor Ali Khán* v. *Mussamut Thakooranee Rutta Koer* (11 Moore I. A. 468), and *Narainee* v. *Nurrohurry* (Marsh. 70), that a plaintiff must be held to the state of facts and equities alleged and pleaded by him in his plaint, or involved in or consistent therewith, applies also to the case made on the pleadings by a defendant.

Therefore where the defendant in a suit in ejectment averred in his written statement that the land in dispute was in fact his, but had previously to 1865 been encroached on by the plaintiff, who in 1865 was about to erect a building thereon, and that the defendant then, in order to avoid litigation, compromised the dispute by payment to the plaintiff of a sum of money, and purchased the land, and had since then remained in possession of it,

Held, that the only defence open to the defendant was that of purchase, and that he could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff commencing before 1865.