

under the terms of the mortgage deeds Nos 7
and 8 the Acting Senior Assistant Judge was in
error in awarding the Respondent the profits of
the mortgaged property for two years; that (2)
interest has been allowed contrary to the provisions
of Act 32 of 1839; that (3) the suit being for the mesue
profits also the Senior Assistant Judge was in error
in not awarding the same up to the date of the decree;
that (4) under the terms of the deed No 7 the appellant
being entitled to the profits of the Khowlee land,
the Senior Assistant Judge should have awarded
the same; that (5) the suit being for the redemption
of the mortgaged property, the Senior Assistant
Judge was in error in allowing the Defendant
to set-off against the Appellants claim in as -
much a set off can be allowed only in actions
of debt; moreover the defendants claim for set
off is barred by the statute of limitations;
and that (6) since the deed No 8 contains a
stipulation for interest the Senior Assistant
Judge was in error in not holding the defendant
liable to render the account of the profits up
to the date of the decree.

The Court consider that
the Senior Assist. Judge was
in error in holding that

Deft. Bal Krishna was entitled to the profits of the year Samsat 1780 to complete the period of mortgage, & to the profits of the year Samsat 1781 by way of interest on the principal of Rs 900 for in the Decree No. 8. it is distinctly set forth that any claim which Deft. Bal Krishna had against Plff for the year that he was not in possession of the mortgaged property was to be settled hereafter. There is nothing to show that the mortgaged property was to be held liable for the same in any way. The Court therefore reverse the decree of the Lower Court and remand the case in order that the Sen. Assint. Judge should ascertain what were the proceeds of the mortgaged property from the commencement of S. 1780 up to the time of its restoration to Plff and after ~~deducting~~ ^{deducting} the same from the amount due on the Bond No 8 dated Bhadrapad Shudh 12th S. 1774 award the balance to whichever party it may be due.

The Judge to pass a new decree on the merits

~~Accounting~~ coats

~~W. M. W.~~

Lucas du Pont

Tobacco

23/8

transcribed

IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3	8	✓
Stamp for Vukeelutnama	2	"	✓
Batta for Process and Postage	1	14	✓
Sectioner's Fee	2	56	✓
Vukeel's Fee one-fourth	6	6	✓
		16	6
Rupees ...		16	16

BY THE RESPONDENT—

Stamp for Vukeelutnama	2	"	✓
Vukeel's Fee one-fourth	6	6	✓
Rupees....			

Handwritten notes:
 1/11/1881
 1/11/1881

