

*Referred Case.*

1868.  
March 10.

## ABHRA'M ALI v. NA'THA' JA'LIAM.

*Mesne Profits—Appeal—Act XXIII. of 1861, Sec. 11.*

N. obtained a decree against A. for certain lands, and was put in possession of them in execution of the decree.

On appeal the decree against A. was reversed, and the lands were accordingly restored to him, but no provision was made as to the *mesne profits* received by N. when he was in possession of the lands under the decree of the lower court. In a suit brought by A. against N. to recover such *mesne profits*, it was held that the suit would lie, and was not prohibited by Sec. 11 of Act XXIII. of 1861.

THIS case was referred, under Sec. 28 of Act XXIII. of 1861, for the decision of the High Court, by H. Phillpotts, Acting Senior Assistant Judge at Broach.

The defendant sued the plaintiff in the Court of the Munsif of Jambúsar, to recover possession of certain lands, and obtained a decree for the possession of them, which he executed. The Munsif's decision was reversed on appeal, and the lands were restored to the defendant, the plaintiff in this suit. He now sues to recover the rent of the land which was received during the time which elapsed between his ejection by the Civil Court and his reinstatement. The question submitted for the opinion of the High Court is, "whether a suit for *mesne profits* payable on account of the subject-matter in another suit, but about awarding which no decision has been passed in that suit," is barred by Sec. 11 of Act XXIII. of 1861. The Acting Senior Assistant Judge was of opinion that the words of the said section were plain, and barred such a suit as this.

PER CURIAM (COUCH, C.J., and NEWTON, J.) :—The Court is of opinion that, under the circumstances stated by the Acting Senior Assistant Judge, a suit does lie, and that it is not prohibited by Sec. 11 of Act XXIII. of 1861.