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on the ground that the appellant's *rakil* had not said a word on it: but remembering the mode in which cases are conducted in the Mofussil, we are of opinion that, if a point really arises and is taken, we should not be justified in holding that it was abandoned, because the *rakil* did not argue it. The decree in this case should have been for redemption of the land on payment of the mortgage money, which is found to be Rs. 80: and we therefore amend the Assistant Judge's decree accordingly. The party seeking redemption must generally pay the costs of the suit; but here the plaintiff offered payment of the amount which might be found due, and the defendant denied the mortgage in toto. He should, therefore, be made liable for the costs in the lower Courts. The defendant had to come to this Court to get the error of the lower Court corrected, and, therefore, he should have the costs of this Special Appeal.

Newton J. concurred.

*Decree amended.*

*Special Appeal 419 of 1868*

Jan. 26.

Ramechandra Raghunath.....Appellant.

Abaji bin Rastya.....Respondent.

*Jurisdiction—Small Cause Court—Arrears of rent,  
 suit for—Special Appeal—Act XI. of 1865, sec. 6  
 —Act XXIII. of 1861, sec. 27.*

In suits for arrears of rents of land, when the claim is under Rs. 500, a Special Appeal lies to the High Court, such claims not being generally cognizable by Courts of Small causes.

For the purpose of recovering rent from a tenant the *mrugsal* year ends on the 31st of July.

This was a Special Appeal from the decision of A. Bosanquet, Acting Judge at Thana, in Appeal suit No. 296 of 1867, reversing the decree of the Munsif of Panwell.

The plaintiff, Ramchandra, sued the defendant, Abaji, to recover rent of a portion of a *khar*, alleging that he had leased it to the defendant under an agreement that the latter should pay him six *mans* of rice per *bigha* in the

shape of rent for each year, but that he failed to pay him at the above rate the amount of rice. The plaintiff also claimed interest on the amount of the rent.

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The defendant denied the lease, and contended that the claim was barred by the law of limitation; that the *khar* originally belonged to Mahadaji Malhar, who had agreed to receive the Government assessment and a *man* of rice per *bigha* from the defendant; that after the survey, Government undertook to repair *khar*, and the defendant accordingly continued to pay rent and the usual *man* of rice per *bigha* to Government; that the plaintiff did not look after the *khar* and that he was not therefore entitled to the *Shilotr Man*.

The Munsif awarded the claim, on the ground that it was not barred, and that the plaintiff was entitled to six *mans* of rice per *bigha*. In appeal, the Acting Judge reversed the Munsif's decree delivering the following Judgment:—

“The issues for decision are :—1, Is this claim barred by the law of limitation? 2—if not, is the plaintiff entitled to the rent demanded by him? 3—if so, is interest due to him?

“I find the 1st and 2nd issues for the defendant.

“A finding on the 3rd issue is, therefore, not necessary.

“Clause 8 of sec. I. of Act XIV. of 1859 is applicable to claims for rents of land. This suit was instituted on the 30th July 1866; but the year for which rent was demanded expired on the 5th June 1863 at latest, the time when, if let to another tenant, it would have been made over to him. The defendant had been paid for the land Rs. 2, annas 12, and a *man* of rice for the years previous to 1862 and 1863, and if the plaintiff wanted more rent he should have given the defendant notice accordingly. I reverse the Munsif's decree with costs.

The appeal was called on for argument on the 7th October 1868 before COUCH C. J., and GIBBS, J.

*Shantaram Narayan* for the respondent. No special appeal lies in this case. Sec. 27 of Act XXIII. of 1861 enacts that no special appeal shall lie from any decision passed in suits cognizable in Courts of small Causes under

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Act XLII. of 1860, where the debt does not exceed 500 rupees Under that Act, it is true, suits for rent could not be brought in a Small Cause Court, but it is now repealed by Act. XI. of 1865 (to which all references to Act XLII. of 1860 are now to be considered to be made), sec. 6 cl. 4 of which enables Small Cause Courts to take cognizance of suits for arrears of rent, when the Judge of such Courts shall have been specially invested by the Local Government with jurisdiction over such claims. Thus suits for arrears of rent are now cognizable by Courts of Small Causes, though the judges of such Courts may not always be invested with power to try them. It cannot now be said that suits for arrears of rent of land are not suits of the nature cognizable in Small Cause Courts.

*Vishwanath Narayan Mandlik*—The jurisdiction of this Court cannot be taken away without express words which sec 6, of the Act certainly does not contain. After stating the suits that are cognizable in Small Cause Courts the section proceeds “ provided that no action shall lie in any such Court.\* \* \* for any claim for the rent of land or other claim for which a suit may now be brought before a Revenue Officer, unless, as regards arrears of *rent*, for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over such claims to such arrears. This, in fact, allows the lokal Government to invest a Small Cause Court Judge Personally with the then jurisdiction of a Revenue Officer over claims to arrears of rent, just in the same way as he may be invested with the Powers of a Principal Sadr Amin under sec. 51 of the same Act. Under (Bombay) Act II. 1866 the Civil Courts are now invested with jurisdiction over claims to rent, but that Act does not extend the jurisdiction of the Small Cause Courts. What should be considered under Sec. 27 of Act XXIII. of 1861 is the normal nature of suits cognizable in these Courts, not the extraordinary jurisdiction that may be conferred upon the Judges of them.

On the 26th January 1869, the Court decided that they would hear the appeal, which was then argued.

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*Vishwanath* for the Appellant:—The present suit was filed on the 30th of July 1866 for rent, for the year 1862-63, which was payable on the 31st of July 1863, and not on the 5th of June 1863 as the Judge holds. The Munsif gave us a decree, because, by the decree Exhibit, No. 37, we had recovered rent for a previous year. The Judge held that the suit was barred because the year expired on the 5th of June 1863, but for Mrugsal year the 31st of July is held to be the date on which rent becomes due, *vide* Special Appeal No. 319 of 1868, decided on the 9th of September 1868, and Revenue Circulars p. 170 No. 3. As to the rate of the rent we are not bound by the acts of the Collector.

As we did not agree with our tenants in regard to the rate of the rent, the Collector interfered and fixed the rate. We however declined to receive the rent at that rate and therefore the Collector attached the *khar*. We then sued the Collector, and in the meantime the tenants paid rent to the Collector. In the suit against the Collector we succeeded in getting from him the balance of rent according to our rate, and our suit was a sufficient notice to the tenants for paying the rent at the higher rate as ruled in Special Appeal No. 78 of 1865. In the absence of any special agreement the rent should be paid at the rate prevailing in the country, that is the rent should be fixed according to the custom of the country; but here we had a decree (Exhibit No. 37) against the defendants, and the rate fixed in it is conclusive.

COUCH, C.J.—It was objected that a special appeal did not lie in this case, but we held otherwise. Sec. 27 of Act XXIII. of 1861 provides that no special appeal shall lie from any decision in any suit of the nature cognizable in Courts of Small Causes under Act XLII. of 1860. Now the latter Act is repealed, and the Act in force is Act XI. of 1865, sec. 50 of which provides that references to Act XLII. of 1860 shall be considered as references to Act XI. of 1865. We must therefore see what are the terms of that Act (XI. of 1865)

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with regard to such a suit. The provision is to be found in its sixth section, which provides that no action shall lie in any such Court for any claim for the rent of land or other claim for which a suit may now be brought before a Revenue Officer, *unless*, as regards arrears of rent, for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears. The application of this, to a case like the present one, depends upon the effect to be given to the word "*unless*," since the case would not be cognizable otherwise. The effect is that a Judge may be vested with the power, but that does not make the suit cognizable generally by virtue of the Act. It is difficult to construe the two provisions together and put a meaning upon them. Suits of the nature cognizable by Courts of Small Causes must mean, without reference to clause 4 of section 6 of Act XI. of 1865, and must be cognizable in general.

Now, as regards the merits of the case, the District Judge laid down three issues. He decided the first and second issues, but came to no conclusion on the third issue as to whether any interest was due to the plaintiff. As to the first issue of limitation, he held that the 5th of July 1863 was the date on which the rent was due, but, according to the decision of this Court quoted, the year does not expire until 31st of July, and, therefore, proceedings for the recovery of the rent could not have been taken against the tenants before that date. Hence the Judge erred in law in holding that the year has expired on the 5th of July. As to the second issue, as to whether the plaintiff was entitled to the rent claimed, the Judge found for the defendant on the ground that the defendant had paid for the land at the rate of Rs. 2-12-0 and a *man* of rice for the years previous to 1862-63, and that the plaintiff had not given notice to the defendant of the increased rent. But it appears that there was a decree between the parties which fixed the higher rate of rent. Previous to the year 1862-63 the Collector had attached the *khari*, and was in possession of it, and the

rent was paid to him and not to the plaintiff. It was, therefore, an error to rely on such payments for fixing, the rate of rent, which, under the circumstances of the case should be the same as was awarded by the decree No. 37. Had there been no decree, the proper decision would have been to award the rent according to what had been paid by the defendant before the Collector attached the land, or, if none appeared to have been paid, according to the custom of the country (a). The only issue remaining undisposed of is in regard to the interest claimed. The Judge has not recorded his finding on it, and, if his finding is desirable, the case must be remanded to him, but the Respondent's *vakil* has intimated that, taking into consideration the expenses and delay attendant on a remand, he will not press his claim for interest, and we are not aware of any law authorizing the award of interest in the manner claimed. We therefore reverse the decree of the District Judge, and amend the decree of the Munsif by deducting the amount awarded by him on account of interest. All costs on the respondent.

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GIBBS, J.—Concurred.

*Munsif's decree amended.*

(a) This was the ruling in Special Appeal No. 420 of 1866, between this plaintiff and another tenant disposed of by the same Bench on 26th January 1869.

*Special Appeal No. 480 of 1868.*

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| Murar Daya <i>et al.</i> | ... | ... | <i>Appellants.</i> |
| Nagria Ganeshia.         | ... | ... | <i>Respondent.</i> |

Jan. 26

*Fees upon Marriage—Caste Question—Reg. II of 1827 sec. 21*

The plaintiffs sued to recover from the defendant certain fees alleged to be due to them, as *Mektars* of the caste, on the marriage of the daughter of the defendant.

The defendant denied that the plaintiffs were his *Mektars*.

*Held*, that the question between the parties was a caste question with which the Courts were precluded from interfering by Reg. II. of 1827 sec. 21.

This was a Special Appeal from the decision of A. I. Spens, Senior Assistant Judge at Kheda, in Appeal suit