

reversed, and we declare that the order for the levy of the new rates from the plaintiff, in the fiscal year 1867-68 was illegal, as well as the distraint made under that order, and we award to the plaintiff the sum of Rs. 29-2-4, being the amount claimed in the plaint, with interest at 9 per cent, per annum from the date when the additional assessment was levied or paid, till the date of repayment. We also direct that the defendant pay all the costs which may have been incurred by the plaintiff in this Court, and in the Court below.

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Gadre
The Collector of
Ratnagiri.

Decree reversed with costs.

Referred Case.

Lachiram Jayasangji...	<i>Plaintiff.</i>
Ramji bin Shivji.	<i>Defendant.</i>

April 27.

Stamp—Promissory note for payment of grain—Act X. of 1862, Schedule A.

An instrument, the form of a promissory note for grain, should be stamped under Art. I. of Schedule A. of Act X. of 1862, with a stamp of the value of one rupee.

Case stated for the opinion of the High Court by Janardhan, Vasudevji, Judge of the Court of Small Causes at Puna, under Sec. 22 of Act XI. of 1865.

“In this suit the plaintiff sues the defendant for the recovery of five-and-a-quarter mans of *nagli* and three mans of *bhat*, or their value, Rs. 24-12-0, on a promissory note dated the 5th of August 1865.

“The note is for one-and-three-quarter mans of *nagli* and four-and-a-half mans of *bhat*, and is written on a stamp of two annas.

“The defendant, amongst other pleas, pleads insufficiency of stamp for the promissory note.

“The question for consideration, therefore, is under what article of schedule A annexed to Act X. of 1862 will a promissory note for grain come.

“A note of this description will not come under either the 10th or the 12th article of that schedule, as both those

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articles expressly refer to promissory notes or bonds, or other obligations, for the payment of *money*. Nor can Article 18, which provides for an optional stamp, take it in, as the bonds therein contemplated are bonds for the eventual payment of money ; the term bond, in its legal sense, importing an obligation to pay a certain sum of money either absolutely or conditionally. The only head, then, under which a bond or promissory note for the payment of grain can be brought is Article 1 of Schedule A, and a stamp of one Rupee will therefore be necessary for such instruments.

“Hitherto the stamp for obligations of this nature has been regulated by the value of the grain secured by them ; but this seems to be a remnant of the practice which prevailed under the old stamp law, Reg. XVIII. of 1827, and it was fully authorised by the terms ‘sum or value,’ used in Appendix B. to that Regulation ; but there is no such provision in the present stamp law.”

The promissory note, alluded to in the case, was as follows :—“Debt-bond, dated the 13th of the month of Shravan Shudhya, Shake 1787, the name of the Samvachhar (year) being Krodhan. On that day the bond was given in writing to the creditor, named Rajashri Gambhirmal Jayasingji Set Marvadi (of) the Shop (at) Mouje Vadgam Tarf Nane Maval, by the debtor, named Ramji bin Shivaji Sonvani inhabitant of Mouje Nayagami of the Tarf aforesaid, now at Vadgam. I have borrowed from you grain principal as mentioned below :—

“One-and-three-fourths mans of *nagli* by

Kaili sir measure 1 $\frac{3}{4}$ mans.

“Four-and-a-half mands of *bhat* (rice in

husk) Sali by Kaili sir measure.....4 $\frac{1}{2}$..

6 $\frac{1}{4}$ mans.”

“In all six-and-a-quarter mans, which (I) shall give (back) as a loan in the month of Margshirsh, of the Shake aforesaid. Should the (same) remain (unrepaid in kind) thereafter, I am to go on paying *wadh* (increase) at I

(namely) one paili per man per mensem from the *Istakbil* (i.e.) the date of the bond, till your grain is repaid (in kind). I am to raise no objection. I, of my own accord and pleasure, and in sound mind, have duly given this bond.

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PER CURIAM (COUCH, C. J., and NEWTON, J.) ;—The Court is of opinion that the document in question requires a stamp of one Rupee, under Article I of Schedule A.

June 15.

Referred Case.

Sitaram Amrut *et al* Plaintiff.
Bhagvant Jaganath *et al* Defendants

Mesne profits—Separate suit—Res Judicata.

When a suit is brought to recover possession of immoveable property and the decree does not provide for the mesne profits that accrued during the suit, a separate suit may be maintained for them. Where, however, it can be shown that the omission in the decree to provide for mesne profits was the deliberate act of the Court, the defendant may set that up as a defence in the separate suit.

Case stated for the opinion of the High Court by Janardan Vasudevji, Judge of Small Causes at Puna, under Sec. 22 of Act XI. of 1865:—

“This suit is one for mesne profits of land sought to be recovered under the following circumstances:—

“The land in question was mortgaged by the plaintiffs’ grandfather to one Gopalrav Deshmukh for, it was alleged, Rs. 21 in 1834-35, and, after the death of the said Gopalrav, the mortgage was assigned by his son, Yashvantrav, to the defendants, with possession of the land. On the 29th of July 1864 the plaintiffs instituted a suit against their mortgagee’s son, Yeshvantrav, and against the present defendants for the recovery of the land in the Court of the Munsif of Puna. Yeshvantrav, however, did not enter an appearance in that suit. Only the present defendants defended it, and the Munsif, having found that Yeshvantrav had mortgaged the land to the present defendants as security for a loan of Rs. 36, and that the defendants had paid Rs. 122-11-3 for assessment due on that land, decreed that, on payment by the plaintiffs to the present defendants of