the suit, indicate an intention on the part of the legislature to provide an adequate protection to the trustees against vexatious suits, and, in cases of doubt, we think, we ought, so to construe s. 18 as not to take away the protection. The contention that the plaint needs only a stamp of Rs. 10, even when damages are claimed, cannot be supported, inasmuch as the compensation claimed would then form part of the subject-matter of the suit, capable of being estimated at a money value within the meaning of the Court Fees Act. On the ground that the suit instituted was different from the one for the institution of which sanction was granted, we dismiss the appeal, but, under the circumstances, there will be no order as to costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

VENKOBA (PLAINTIFF), APPELLANT,

and

SUBBANNA (DEFENDANT), RESPONDENT.*

1887. August 5.

Civil Procedure Code, s. 43—Claim for mesne profits received prior to date of former suit for land.

Where a suit to recover land was brought and no claim was made for mesne profits received prior to date of plaint:

Held, that s. 43 of the Code of Civil Procedure was a bar to a subsequent suit for such mesne profits.

CASE stated under s. 617 of the Code of Civil Procedure by H. R. Farmer, Acting District Judge of Kurnool, as follows :—

"The plaintiff (appellant) on the 29th of September 1885 brought suit No. 458 of 1885 on the file of the District Múnsif's Court of Nandyal, and on the 8th of October 1885 suit No. 476 of 1885 on the same file, to set aside a deed of gift of certain lands and to obtain possession thereof. He obtained decrees in his favor on the 24th of November 1885. He, subsequently, on the 23rd April 1886, brought the suit No. 159 of 1886, which has

* Referred Case No. 4 of 1887.

VENKOBA v. SUBBANNA.

led to the present reference. This last-mentioned suit was for the mesne profits, which had accrued on the lands which formed the subject of the deed of gift above mentioned, and which profits accrued between the date when the defendant obtained possession of the lands by virtue of the deed of gift and the date of suit. The Múnsif held that s. 43 of the Code of Civil Procedure showed that mesne profits were not recoverable in the suit now under reference (original suit 159 of 1886), inasmuch as it was obligatory on the plaintiff to have claimed them in the suits for possession. If the cause of action is held to be the same, the Múnsif is apparently right, but from the wording of rule (*a*), s. 44, it seems that the cause of action in a suit for mesne profits is not always the same as the cause of action in a suit for the possession of the lands on which these profits accrued. In the present case I am of opinion—but my view is not free from doubt—that the Múnsif was right in holding that the cause of action was one and the same.

"The question is whether a plaintiff, who sued for possession of land only without suing for mesne profits in respect of the same land, which he could have done in the same suit, is entitled to bring another suit to recover the said mesne profits."

Srirangácharyar for plaintiff.

Ramachandra Ráu Saheb for respondent.

The Court (Muttusámi Ayyar and Brandt, JJ.) delivered the following

JUDGMENT :—The facts of the case are sufficiently stated in the letter of reference. It appears that the plaintiff claimed possession of certain lands in suits Nos. 458 and 476 of 1885 and obtained a decree for possession; that decree was executed and he was placed in possession. He brought the suit, out of which this reference arises, to recover Rs. 120 as the amount of mesne profits due to him for the years 1883, 1884, and 1885. It is conceded for him that he was in a position to have claimed such profits when he instituted the former suits, and we agree with the referring officer that s. 43 of the Code of Civil Procedure is a bar to the present suit. That section provides that every suit shall include the whole of a claim which the plaintiff is entitled to make in respect of the cause of action on which the suit is founded, and a claim for rent due for the year 1874, whilst in a former suit the rent due for the year 1875 only was claimed, the rent for 1874 and

1875 being then due, is mentioned in the illustration as barred by the section. On comparing s. 43 of Act X of 1877, as modified by Act XIV of 1882, with s. 7 of Act VIII of 1859, we find that the words "which the plaintiff is entitled to make in respect of the same cause of action" have been substituted for the words "arising out of the cause of action.' We are, therefore, of opinion that the words "every suit shall include the whole of the claim in respect of the cause of action," include not only the claim arising out of that cause of action but also any other claim founded on the same cause of action and enforcible at the date of the former suit. This view is in accordance with the decision of the Judicial Committee in *Madan Mohan Lal* v. *Lala Sheo Sanker Sahai*(1).

Our answer, therefore, to the reference is that no second suit would lie for mesne profits, which had accrued due prior to the date of the former suit and which the plaintiff was in a position to have then claimed. The plaintiff will pay the defendant's costs of this reference.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Parker.

1887. Sept. 2.

VITLA KAMTI (PLAINTIFF),

and

KALEKARA (DEFENDANT).*

Limitation Act, 1877, *sch. II*, *art.* 80.

Suit on an unregistered bond, whereby certain movable property in the debtor's possession was pledged as security for the repayment of principal and interest:

Held, that the suit was governed by art. 80, sch. II, of the Indian Limitation Act, 1877.

CASE stated, under s. 617 of the Code of Civil Procedure, by P. Ram Ráu, District Múnsif of Kasergode, in small cause suit No. 24 of 1887.

The material portion of the Múnsif's judgment was as follows:—

"The suit was for Rs. 17-2-6, principal and value of arrears of interest under a bond, being a hypothecation of movable

(1) I.L.R., 12 Cal., 482.

* Referred Case No. 7 of 1887.