removed a window two days afterwards and effected an er
The question is whether, assuming the defendant's story
true, the plaintiff's possession is such as to enable him to
himself of the above section.

In *Dádábhái Narsidás* v. *The Sub-Collector of Broach*(1), Justice Melvill expressed an opinion that a mere tresp could not succeed under section 15 of Act XIV of 1859 language of which is virtually the same as that of the se under consideration, on the ground that the plaintiff in su case has not acquired juridical possession and, therefore, cc be dispossessed. We think this is the correct view of the sectio and it is quite consistent with the remark in *Krishnárav Yasi vant* v. *Vásudev Apáji Ghotikar*(2) as to the general object of th Act. It is further in accordance with the remarks of the Court in *Virjivandás Mádhavdás* v. *Mahomed Alikhán Ibráhimkhán*(3). Therefore, in the present case, assuming the defendant's statement is true, (as to which we of course express no opinion), even if the plaintiff can be said to have been in possession by what he did, still such possession not having been acquiesced in by the defendant never became a juridical possession which could give him the right to invoke the aid of the Mámlatdár or the Court under section 9 of the Specific Relief Act.

Order accordingly.

(1) 7 Bom. H. C. Rep., 82, A. C. J. (2) I. L. R., 8 Bom., 371.
(3) I. L. R., 5 Bom., 208.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood, and Mr. Justice Candy.

KRISHNA'JI SADA'SHIV RA'NADE, (PLAINTIFF), *v.* DULABA', (DEFENDANT).* 189. *March*

Stamp—Stamp Act (I of 1879), Sch. I, Art. 22—Civil Procedure Code (Act XIV of 1882), Sec. 62—Copy of a document filed with the plaint—Attestation by the Court or its officer—Stamp duty.

Article 22 of Schedule I of the General Stamp Act (I of 1879) does not apply to a copy contemplated by section 62 of the Civil Procedure Code (Act XIV of

* Civil Reference, No. 21 of 1890.

attestation of which copy by the Court or its officer being not made application of the owner of the copy, but solely in consequence of the direction of the Code, with a view to its being filed for the purpose of proving the book entry when produced at the hearing.

This was a reference made by Ráo Sáheb Bháu Yashavant, Subordinate Judge of Sangameshvar, in the Ratnágiri District, under section 49 of the General Stamp Act (I of 1879).

The question submitted to the High Court was :—

"Whether copies or extracts of entries in account books and other similar books which a Civil Court has to attest under section of the Code of Civil Procedure do not fall within article No. 22 of the first schedule of the Stamp Act."

The reference was as follows :—

"In Suit No. 401 of 1890, which has been brought in this Court for the recovery of *thal* dues, the plaintiff has filed with his plaint * three extracts * * of certain entries in his *pahánkardás* (appraisement books) to show the particulars of the crops grown by the defendant on certain lands forming part of his *khotki* estate during the years in suit. The extracts in question, which have been attested by the Clerk of this Court as correct, are written on plain paper, and the question arises whether they can be allowed to be placed on the record, unless they are adequately stamped under the above-mentioned article of the Stamp Act.

"I am humbly of opinion that they cannot be so placed on the record, unless they are stamped under that article, since such copies and extracts are not exempted from the payment of the stamp duty chargable under the Act, and the remarks made by their Lordships in the case of *Harichand* v. *Jivna Subhána*[1] seem also to support the view that copies intended to be used in evidence in the course of a suit are not to be received on plain paper. It has been usual, however, so far to receive such copies on plain paper, and I feel considerable doubts about the correctness of my view, particularly as it is opposed to the practice obtaining in several of the Courts.

(1) I. L. R., 11 Bom., 526.

"The question is of some importance and of frequent rence. * * * * *

"My opinion is that the question hereby referred sho answered in the affirmative."

Shántárám Náráyan, (Government Pleader), for the Go ment:—The Clerk of the Court attests copies filed along wit plaint to show that they are correct. Such copies are re to be made under section 62 of the Civil Procedure Cod would be certified copies.

[SARGENT, C. J.:—Such a copy is annexed to the plaint fo purpose of identifying the original. The copy cannot be use evidence. It is the original only that will go in as evidence.]

We rely on article 22, Schedule I of the Stamp Act. The c of a power of attorney is similar to the present one. The ori inal power of attorney is filed along with the plaint; subs quently the original is taken back, and a copy of it is kept c the record of the case to certify its correctness, yet such a cop is required to be stamped.

[CANDY, J., referred to sections 141 and 144 of the Civil Procedure Code.]

These sections contemplate a later stage of the suit when the originals have done their function, while the originals of the copies filed along with the plaint have again to appear at a further hearing of the suit. The present case may be likened to affidavits and powers of attorney. The High Court circular order on page 19 of the Circular Orders of the Bombay High Court supports our contention.

Vásudeo Gopál Bhandárkar (amicus curiæ) for the plaintiff was not called upon to address.

Vishnu Krishna Bhátavdekar for the defendant was not called upon.

SARGENT, C. J.:—We do not think that article 22 of Schedule I of the Stamp Act applies to a copy contemplated by section 62 of the Civil Procedure Code, the attestation of which by the Court or its officer is not made on the application of the owner of

py, but solely in consequence of the express direction of de, with a view to its being filed for the purpose of iden- g the book entry when produced at the hearing.

RDWOOD, J.:—I concur; and would only wish to add that, in pinion, article 22 of Schedule I of the Stamp Act can apply o certified copies held at the time when they become char- e with stamp duty by the persons by whom the stamp duty by provided is payable. When a plaintiff produces the copy red to in section 62 of the Code of Civil Procedure, he does not in order that it may be admitted in evidence or substitu- for the original entry on the record, but merely with a view its being filed, when attested as correct, and referred to at the aring, when the original entry is produced under section 138, or the purpose of identifying that entry. When it has been ttested and filed for that purpose, it is no longer held by the laintiff. It is held by the Court, under the express direction of the law; and no stamp duty can, while it is so held, be levied in respect of it from the plaintiff.

CANDY, J.:—I concur in holding that the copy of an entry in a shop-book or other book in the possession or power of the plaintiff, which copy is under section 62 of the Civil Procedure Code attested and filed by the Court, is not a "copy certified to be a true copy by or by order of any public officer" under article 22, Schedule I of the Indian Stamp Act, 1879.

If a plaintiff sues upon a document in his possession or power, he is compelled, under section 59, to produce it in Court when the plaint is presented, and at the same time to deliver the document or a copy thereof to be filed with the plaint. But if such document is an entry in a book, it might be obviously inconvenient for the Court to file the whole book with the plaint. Therefore, under section 62 the Court is compelled—there is no discretion in the matter—to forthwith mark the document for the purpose of identification, and after examining and comparing the copy with the original, and attesting the copy if found correct, the Court must return the book to the plaintiff and cause the copy to be filed.

At the hearing of the suit the plaintiff must produce
containing the entry on which he sues, and the entry
duly proved.

The object of the copy, which has been filed, is to pro
the entry in the book has not been tampered with since t
of the suit. Directly the entry has been proved, the co
longer required. It is, in my opinion, impossible to ho
the Legislature intended such a copy, attested and filed fo
purposes, to be treated as a certified copy subject to a duty
the Stamp Act.

I think that it is necessary to clearly show that our
on the reference in question is limited to the case as al
described.

It appears from the Subordinate Judge's letter of refere
that, in the case in which he made the reference, the plair
had filed with his plaint extracts of certain entries in his appra
ment books, to show the particulars of the crops grown by
defendant on certain lands forming part of his *khotki* est
during the years in suit. It is evident that, strictly speakin
the plaintiff—a *khot* landlord suing for rent—was not suing
these entries in the appraisement books, which were simply "evi-
dence in support of his claim," and, therefore, should have been
merely entered in a list annexed to the plaint (section 59). Bu
as the plaintiff did, apparently, file the entries with his plaint,
and as the question actually submitted by the Subordinate Judge
is simply whether copies, "which a Civil Court has to attest
under section 62 of the Code of Civil Procedure, do not fall with-
in article 22 of the first schedule of the Stamp Act," the answer
should, I think, be in the negative.

These remarks seem necessary, because in another portion of
his referring letter the Subordinate Judge says "the question
arises whether they (the extracts from the appraisement books)
can be allowed to be placed on the record, unless they are ade-
quately stamped." If that be so, then the Subordinate Judge has
not correctly stated the question which at the commencement of
his letter he says he has submitted to the High Court. If the
appraisement book is taken to be an "account in current use"

e provisions of section 141 A. the question may arise the copies of the entries "examined, compared, and in the manner mentioned in section 62," and which art of the record" under section 142A, do require to be . It must be understood that we have not answered estion.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

'RA'YAN VITHAL MA'VAL, (ORIGINAL DEFENDANT No. 3), APPELLANT, . GANOJI AND OTHERS, (ORIGINAL PLAINTIFFS AND DEFENDANT No. 4), RESPONDENTS; AND GITA'BA'I AND ANOTHER, (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS, *v.* GANOJI AND OTHERS, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

ortgage—Sub-mortgage—Redemption suit—Accounts taken between mortgagee and sub-mortgagee—Practice—Procedure—Dekkhan Agriculturists' Relief Act (XVII of 1879), Sec. 14.

In a suit for the redemption of land which has been sub-mortgaged by the mortgagee, in which suit the sub-mortgagees are co-defendants, the mortgagee is entitled to have an account taken of the sub-mortgage. The judgment should direct an account of what is due to the original mortgagee and then of what is due to the sub-mortgagee; and that upon payment to the latter of the sum due to him, not exceeding the sum found due to the original mortgagee, and on payment of the residue, if any, of what is due to the original mortgagee, both shall reconvey to the mortgagor.

THESE were appeals from the decision of L. G. Fernandez, First Class Subordinate Judge of Poona.

In 1876 one Ganoji mortgaged certain lands with possession to Vithal Sakhárám for Rs. 13,000. In 1887, Vithal Sakhárám sub-mortgaged the said lands (except a small portion) to Vithal Rámchandra for Rs. 5,000 and to Rámchandra Sadáshiv for Rs. 2,000. In 1888 the sons of Ganoji (the mortgagor) filed this suit for redemption. The defendants were the representatives of the mortgagee, who was dead, and of the sub-mortgagees, who also were both dead.

* Appeals Nos. 39 and 46 of 1889.