

1863. date of suit ; with further interest on the aggregate sum so
February 16. adjudged, and on the costs of the suit from the date of the
R. C. No. 7 decree to the date of payment.”
of 1863.

No counsel were instructed.

The Court delivered the following

JUDGMENT :—The Judge, we think, was in error in decreeing the payment in this case of interest for the limited period of thirty days from the date of the decree. A discretion is given in Section 19 of Act XXIII of 1861, as to the granting of further interest after the making of the decree ; but when the Court thinks proper to grant such interest, it is to be from the date of the decree to the date of payment. The discretion as regards the time of payment is given in respect of two periods of time—from the date of the suit to the date of the decree, and from the date of the decree to the date of payment ; whereas, under the repealed section (193) of Act VIII of 1859, only one period was provided for, namely from the date of suit to date of payment.

APPELLATE JURISDICTION. (a)

Referred Case No. 9 of 1863.

SUBBIRAMANIYA AYYAN against VELAYUDA DEVAR

In a suit for arrears of rent a Small Causes Court may decide whether the renting has taken place and pass judgment for the amount claimed, without adjudicating on the plaintiff's title.

1863. **I**N this case R. B. Swinton, the Judge of the Small Cause^s
February 16. Court of Tanjore, stated for the decision of the High
R. C. No. 9. Court a question which had arisen in each of the Suits Nos.
of 1862. 645, 646 and 647 of 1862 on the file of his Court.

The facts sufficiently appear from the following judgment which was delivered by

(a) Present : Scotland, C. J. and Frere, J.

SCOTLAND, C. J. :—In the three cases stated for the decision of the Court the plaintiff claimed to recover from the defendant arrears of rent alleged to be due to him under rent-bonds and a verbal agreement; and we are of opinion that the Judge was wrong in deciding that it was not competent for him to enter into the question of whether the renting relied upon by the plaintiff had taken place. It is clear that in respect of suits for rent, Courts of Small Causes have jurisdiction, and in such suits the question of whether or not there has been a renting of the property, when raised as in the present cases, must necessarily be considered and decided. The defendant cannot oust the jurisdiction of the Court by the mere fact that he also denies the title of the plaintiff to the property alleged to have been rented. The denial of title in these cases may be altogether unfounded and fraudulently put forward; and, exercising his jurisdiction as regards the claim of rent, it was for the Judge to hear the evidence and decide with respect to the rent-bonds and agreements, on which the plaintiff's claim was founded. If they were clearly proved to the satisfaction of the Judge—if it was also proved also that an arrear of rent had become due from the defendant to the plaintiff, the Judge was fully competent to pass judgment for the amount of the arrear proved to be due under those rent-bonds and agreements, without going into the question of title to the property rented.

1863.
February 16.
R. C. No 9
of 1861.

In the case in which the counterpart lease is said to have been lost, it is of course incumbent on the plaintiff to account satisfactorily for the non-production of this document, before he can be allowed to go into secondary evidence to prove its contents.
