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 of 1865.

pending the settlement of the question of mesne profits. It was equivalent to an informal permission, under Section 97 of the Code of Civil Procedure, to withdraw the suit with liberty to bring a fresh suit for the same matter.

This being so, we think the plaintiff was entitled to recover. We therefore affirm the decree of the Civil Judge and dismiss this appeal with costs.

Appeal dismissed.

APPELLATE JURISDICTION (a)

Referred Case No. 1 of 1866.

PONNAPPA MUDALI *against* SRINIVASA MUDALI.

A plaint was rejected by a Court of Small Causes on the ground that that Court had no jurisdiction. It was then filed in the Court of a District Munsif who decreed for the plaintiff. On appeal to the Principal Sadr Amin it was objected that Munsif had no jurisdiction, as the suit was one cognisable by the Small Cause Court.

Held, (the Court having decided that the Small Cause Court had jurisdiction) that the District Munsif's Court had no jurisdiction, that the erroneous dismissal of a former suit for the same cause of action by a Small Cause Court could not warrant the institution of the suit in the District Munsif's Court, and that the Principal Sadr Amin rightly concluded that the suit ought to be dismissed.

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THIS was a case referred for the opinion of the High Court by Krishnasamy Aiyar, the Principal Sadr Amin for Chittoor.

No Counsel were instructed.

The facts sufficiently appear in the following

JUDGMENT :—The plaint in this case was first presented to the Court of Small Causes, but rejected on the ground that that Court had no jurisdiction. It was then filed in the Court of a District Munsif who gave a decree for the plaintiff. On appeal to the Principal Sadr Amin it was objected that the Munsif had no jurisdiction, as the suit was one cognisable by the Small Cause Court. The Principal Sadr Amin now submits for our decision the following questions :—

(1). "Whether the suit was, or was not cognisable by the Court of Small Causes.

(2). "Whether the fact of the Small Cause Court having dismissed the suit as beyond its jurisdiction, while in

(a) Present Scotland C. J. and Innes, J.

fact it was not so, removed in any way the incompetency of the Munsif to take cognizance of the suit.

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(3). "Whether, by reason of the defendant not having urged before the Munsif at the original trial, the objection that the suit was within the cognizance not of the Munsif but of the Court of Small Causes, the Principal Sadr Amia is precluded from taking notice of the above objection in the appeal.

(4). "What is the remedy now open to the plaintiff?"

This case does not come within the provisions of Madras Act IV of 1863, and we take it to be the fact that at the time of the commencement of the suit in the District Munsif's Court, the defendant was residing within the local limits of the Small Cause Court of Chittoor. That being so, we are of opinion the Court of the District Munsif of Tiruvatore was not competent to entertain the suit, such Court having no jurisdiction within the local limits of the jurisdiction of the Small Cause Court. (*Section 12 of Act 42 of 1860 re-enacted in Section 12 Act 11 of 1865.*)

There is, it appears from the case stated, no question as to the plaintiff's right at the time to the exclusive possession of the land and the crop upon the land. It appears also that the defendant entered on the land and against the will of the plaintiff stopped the reaping of the crop, solely because he considered that it was being reaped too early. Under these circumstances the defendant's acts amounted to a trespass, and rendered him liable to any damage which the plaintiff could prove he had sustained by the trespass: and a suit to recover the alleged amount of such damage (Rupees 127-6-7) is clearly of a nature cognizable by a Small Cause Court under Section 3 of Act 42 of 1860.

For these reasons we answer the first question submitted in the affirmative. With respect to the other questions it is only necessary to say that the dismissal of a former suit for the same cause of action by the Small Cause

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Court (erroneously as we gather from the case) could not warrant the institution of the suit in the District Munsif's Court, the jurisdiction of that Court being expressly excluded by the provisions of Act 42 of 1860, and that the Principal Sadr Amin rightly concluded that the suit ought to be dismissed. The plaintiff must be left to bring his suit in the Court having jurisdiction to decide it.

APPELLATE JURISDICTION (a)

Civil Petition No. 50 of 1866.

MANTHARESWARA AIYAR.....*Petitioner.*

KAMALA NÁIKAR, ZAMINDÁR OF AMMANÁI- } *Counter*
 KANUR..... } *Petitioner.*

Where a bond was registered under Sections 51 and 52 of Act XVI of 1864, and by its terms a mount of interest was to be paid at the end of every month. *Held*, that by virtue of the special registration the obligee was entitled to move for execution in respect of each instalment of interest due.

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 April 21.
 C. P. No. 50
 of 1866.

THIS was a petition against an order of R. R. Cotton, the Civil Judge of Madura, dated the 25th November 1865. The proceedings of the Civil Court were as follows :—Read Miscellaneous Petition No. 635 of 1865, presented on the 22nd November 1865, by Vásudeva Sástri, Vakil, on behalf of Manthareswara Aiyar, plaintiff in No. 53 of 1865 on the file of the District Registrar of Madura, under Sections 51 and 52, Act XVI of 1864, and Section 212, Act VIII of 1859, that as the defendant Kamala Náikar, Zamindár of Ammanáikanur, has failed to act up to the terms of the bond dated 9th March 1865, registered under the above said Section 51, the sum of Rupees 300, being the interest due for the 7th and 8th instalments, together with Rupees 0-8-0, being the value of the stamp used for this motion, and Rupees 3-12-0, being the $\frac{1}{4}$ fee due to the Vakil, may be collected from the defendant by issuing a warrant against him.

(a) Present Innes and Collett, J. J.