

1876.  
November 28.

REG.  
v.  
MUTHAVAN.

The High Court passed the following  
RULING.—In the cases reported the 2nd-class Magistrate has allowed prosecutions for the offences of enticing away a married woman with intent to have illicit intercourse, and of criminal breach of trust, respectively, to be withdrawn under Section 188 of the Code of Criminal Procedure.

The District Magistrate submits that the offences in question are not offences which may lawfully be compounded. The High Court agree that the offences of enticing away a married woman with a criminal intent and of criminal breach of trust are not offences which may lawfully be compounded. The circumstances of the cases brought to notice are, however, such as to render active interference on the part of the High Court unnecessary.

[Upon the general question of what offences may be lawfully compounded see *Reg. v. Rahimat*, I.L.R., 1 Bom., 147 (Full Bench) and note.]

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## APPELLATE JURISDICTION.

*Before Sir W. Morgan, C. J., and Mr. Justice Innes.*

KRISHNAREDDI GOVINDAREDDI AND THREE OTHERS  
(PLAINTIFFS) SPECIAL APPELLANTS, *v.* STUART AND  
FOUR OTHERS (DEFENDANTS) SPECIAL RESPONDENTS (1).

*Act XXVIII of 1860, Section 25—Power of Government to extend time for appeal.*

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January 11.

The proviso contained in Section 25 of Act XXVIII of 1860 gives a discretionary power to the Government of extending the time for appeal by suit at all times even *after* the expiry of the period limited.

PLAINTIFFS, inhabitants of the village of Atlúr, brought this suit for the cancellation of an order passed by the 1st defendant in his capacity as Deputy Director of Revenue Settlement, on the 10th February 1873, in the matter of a boundary dispute between the said plaintiffs and the defendants 2 to 5, inhabitants of the village of Kondúr, and for the removal of the boundary marks

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(1) Special Appeal No. 818 of 1876 against the decree of J. H. Nelson, District Judge of Cuddapah, dated 22nd September 1873, reversing the decree of S. R. Dawes, Subordinate Judge of Cuddapah, dated 31st March 1876.

placed by defendants in accordance with the terms of the said order. The suit was brought on the 20th November 1873, and the defendants 2 to 5, among other pleas, pleaded that the suit was barred, having been instituted after the expiration of the time allowed by Section 25 of Act XXVIII of 1860. The Subordinate Judge considered that "Exhibit A sufficiently disposed of the question of limitation in the plaintiffs' favor," and he disposed of the case on its merits and by his decree modified the order of the 1st defendant. Exhibit A was an order of Government dated 26th September 1873, and was to the following effect— "The time for appeal allowed by Section 25, Act XXVIII of 1860 is extended so as to admit of petitioners' preferring an appeal to the Civil Courts within two months from the date of this order." The defendants 2 to 5 appealed, their second ground of appeal being that the suit was brought out of time.

The District Judge (1) in his judgment said—"The second ground of appeal relied on by the defendants appears to me to be sufficient to warrant me in setting aside the decree of the Lower Court as made without authority. The decision of the 1st defendant was published on the 10th February 1873, and parties dissatisfied therewith could appeal therefrom at any time within two calendar months from that date by bringing a regular suit in accordance with the provisions of Section 25 of Act XXVIII of 1860. But the present plaintiffs did not so appeal. They brought their suit only on the 20th November 1873, or not until nine months after the date of the decision. The plaintiffs urge that they were warranted in thus delaying action by the order of Government marked A, which runs as follows"—[*vide supra.*] "But this Government order was not made until the 26th September 1873, that is to say, not until the plaintiffs' time had run out, and their remedy had been barred by the space of more than five months.

The plaintiffs contend that Government was at liberty at any time to make an order giving them more time within which to appeal, but looking to the plain words and intent of the Act I cannot admit the truth of this proposition. It seems to me to be certain that the Act enables the Governor in Council at any

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time before the two calendar months run out to extend the time for suing for a reasonable space of time, but not, as was attempted in this case, to resuscitate a right of action long since dead and gone." Accordingly he set aside the decree of the Lower Court and upheld the order of the 1st defendant.

The plaintiffs preferred a Special Appeal on the grounds among others, that under Act XXVIII of 1860 the Government had power, unqualified with reference to the time of its exercise, to extend the period for appealing to Civil Courts from decisions of Revenue Settlement Officers; and that the suit was properly sustainable under Exhibit A.

Mr. *Hundley* (with him *Gurumurthi Ayyar* and *Kristnasami Chetti*) for the appellants, contended that under the proviso contained in Section 25 of Act XXVIII of 1860 the Government had power to give leave to appeal by their order, Exhibit A, although the application for leave was not made until after the expiration of the two months. If the word "extend" be construed in its strict sense not only the application to Government for leave to appeal but the order thereon must be made within the two months, which would seldom happen, and it can scarcely have been intended by the Legislature that the right of appeal should depend on the time when the order was issued and not on the nature of the cause shown.

Mr. *Johnstone* (with him *C. V. Sundram Sastry*) for the respondents, submitted that the words in the proviso "extend \* \* within such further period" showed that the permission to appeal after the expiration of the two months should be granted within that time. Where the Legislature has intended that leave to appeal might be granted at any time as in the Limitation Act (IX of 1871) Section 5 (b), it has used very different words

The Court delivered the following judgments :—

MORGAN, C. J.—The language of the first part of the proviso (1) taken alone appears to me to justify the conclusion of the Lower Appellate Court, for the authority thereby given to the Governor in Council is to "extend the period" allowed for "appeal" to the Civil Courts and not to direct the admission of an "appeal" after the prescribed period has once elapsed.

But the whole proviso read with the preceding portion of the section justifies a less literal construction.

The two months allowed for appeal must be computed "from the passing of the decision."

By the first part of the section (1) the Settlement Officer is directed to record his decision and the grounds for arriving at it and to "inform the parties of the same," the decision itself being subject to revision by the authority to whom the Settlement Officer is subordinate.

It cannot be said that there is any very clear indication here of the date from which the appointed time should be reckoned, or any provision to secure to the parties interested the full period of two months after information of the decision reaches them. Certainly, if the time of the passing of the decision is taken to be the day when it is recorded by the Settlement Officer, this stringent limitation may in many cases be reduced in effect to a much shorter period.

It may well have been the intention of the Legislature to confer on the Government an authority similar to that which the Courts of Appeal exercise under the Code of Civil Procedure in the admission of appeals after the prescribed time has elapsed, just cause being shown for the delay. And the proviso under consideration read as a whole and with the section to which it is appended may, I think, be construed to authorize an enlargement of the time in the shape of a further period of appeal and not merely an extension of the original period.

INNES, J.—The view of the learned Judge of the District Court is that after the expiry of the term of two months from the date of the decision of the Settlement Officer, the right of suit is dead and gone. Suppose, then, the person wishing to question the decision in a Civil Court having reason to think the period of two months inadequate makes his application to the Government for an extension some considerable number of days within that period, but the sanction of Government is not given until after the expiry of the period; according to the view of the learned Judge, the right of suit is gone although due diligence was used by the applicant and the delay is only on the part of the Government. I do not think the Legislature can have intended that the rights

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of the person considering himself aggrieved should be liable to extinction through a delay on the part of the authority to whom is given the power of extending the period within which a suit may be instituted.

But it appears to me there is no middle view. If the extension is *granted* after the expiration of the time limited, the Act (1) does not admit of a distinction being made between the case of a party who applies to Government *within* the expiry of the time and one who applies after the expiry of it. Both, so far as the language of the Act is concerned, would be in the same category, and I think it is the more reasonable course to construe the Act as giving a discretionary power to the Government (a power which it may be presumed they would not exercise unless they were satisfied there had been no want of due diligence) of extending the time for appeal by suit at all times even *after* the expiry of the period limited.

I think the view taken is erroneous, and I would reverse the decision and remand the case for disposal on its merits.

*Appeal allowed.*

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## APPELLATE CIVIL.

*Before Sir W. Morgan, C.J. and Mr. Justice Holloway,*

MATHAPPA CHETTI (DEFENDANT) SPECIAL APPELLANT, *v.*  
CHELLAPPA CHETTI (PLAINTIFF) SPECIAL RESPONDENT. (2)

*Contract—Foreign Court—Jurisdiction.*

1876.  
October 2.

A, a Hindu British subject, neither domiciled, resident, nor possessing property in the foreign State of Pudukotta, casually resorted thither and there drew a bill for a sum found due to his creditor B, resident in that State. B. sued A. on this bill in the Civil Court of Pudukotta and got a decree in his favor. B. then sued A. in the Subordinate Court of Madura for enforcement of this decree. A. pleaded that the Pudukotta Court had no jurisdiction to pass the decree sued on and that he had had no notice of the suit. It was found, on regular appeal, that A. had had notice, and decided that the Pudukotta Court had jurisdiction.

*Held*, on Special Appeal, that the Civil Court of Pudukotta had no jurisdiction to try the suit. That the mere making of a contract within the jurisdic-

(1) Act XXVIII of 1860.

(2) Special Appeal No. 539 of 1876 against the decree of P. P. Hutchings, District Judge of Madura, dated 7th April 1876, reversing the decree of A. P. Shrinivassa, Subordinate Judge of Madura, dated 5th November 1874.