1876. August 21.

OAKES & Co. v. JACKSON.

the law as I find it, without bending it to suit any class of persons.

For the reasons already given I am of opinion that this suit ought to be dismissed with costs.

Suit dismissed.

APPELLATE CIVIL.

Before Sir W. Morgan, C.J., and Mr. Justice Kindersley.

SESHA'DRI A'YYANGA'R *v.* SANDANAM AND OTHERS (1).

Landlord and Tenant.—Madras Act VIII *of* 1865—*Exchange of pattás and muchalkás.*

1872. April 18.

The pattás and muchalkás required by Madras Act VIII of 1865 should be made and exchanged during the existence but not necessarily at the commencement of the tenancy, the terms of which they are meant to express.

The 4th Section of the Act requires no more than that the pattás should mention the rate and proportion of the produce to be given and not the specific quantity or number of measures.

This was a case referred for the opinion of the High Court by P. Vengu A'yyan, the District Munsiff of Shívaganga, in Suits Nos. 1065 to 1095 and 1098 to 1109 of 1871, under the provisions of Act XI of 1865, section 21.

The suits were brought for the recovery of the mélwáram rents for Faslis 1279 and 1280 (A.D. 1869 and 1870) of lands cultivated by the defendants and belonging to the plaintiff, and the Munsiff found as a fact that pattás were tendered to and refused by the defendants for these Faslis.

The pattás had not, however, been tendered at the commencement of the Faslis for which the rent was claimed, as the Munsiff was of opinion they should have been. The Munsiff, considering the practice that had hitherto been observed throughout the zamindárí of Shívaganga (where the terms of the tenancy are precisely the same as in the village in question) of exchanging pattás and muchalkas after the revenue settlement is made, and the impossibility of specifying in the pattás and muchalkas the amount of rent, as required by the Rent Recovery Act, before the crops are reaped and threshed out, referred the following question for the decision of the

(1) Referred Case No. 4 of 1872.

High Court "whether pattás and muchalkas should be exchanged between landlord and tenant at the commencement of the Fasli year, or whether it could be done at any time before the landlord's claim for the rent of that Fasli might be barred by section 8 of the Limitation Act XIV of 1859."

Mr. *Mayne* appeared of counsel for the plaintiff.

The defendants did not appear.

The Court delivered the following

JUDGMENT:—At what precise time these written agreements shall be entered into the Madras Act VIII of 1865 has not expressly enacted or declared.

But they should be made and exchanged as soon as conveniently may be after the creation and during the existence of the tenancy, the terms of which they are meant to express.

Although there is no prescribed time when they must be given, ample provision is contained in the law for the due enforcement of the clauses touching the giving of pattás and muchalkas.

No suit or legal proceedings can without them be maintained to enforce the terms of the tenancy, unless both parties have agreed to dispense with such written agreements, or unless "the party attempting to enforce the contract has tendered such a pattá or muchalka as the other party is bound to accept."

A landlord who refuses to grant a pattá is liable to be sued by his tenant three months after demand made; and a tenant who refuses to accept a pattá and to give in exchange a muchalka may be sued by his landlord one month after demand made (ss. 8-9, Act VIII of 1865).

The landlord or his representative is found in the cases out of which this reference arises to have tendered to the tenants such pattás as they are bound to accept. This being so he is entitled to maintain suits against them for arrears of rent, and this notwithstanding that pattás and muchalkas were not exchanged at the commencement of the fasli year.

Whether valid reasons are shown for postponing the exchange of pattás and muchalkas until after the crops have been gathered and measured we need not now consider, but we may observe that the words of the 4th section, which refer to a rent to be rendered in kind, or by a share of the produce, seem to require no more than that the pattá should make mention of the rate and proportion of

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the produce to be given, and not the specific quantity or the number of measures of grain, &c., which can only be ascertained after the harvest.

NOTE.—The same question was, with some others arising under Act VIII of 1865, referred to a Full Bench in 1874. See 7, Madras H.C. 313-322 note, and Addenda. A majority of the Full Bench then took the same view as was taken in this case, and this has been followed in several subsequent cases of the like nature.

APPELLATE CIVIL.

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

In the matter of the Estate and Effects of Lee Chengalroya Naicker, *deceased.*

1876. July 14, 18.

SOMASUNDARAM CHETTI AND FIVE OTHERS, APPELLANTS, *v.* THE ADMINISTRATOR-GENERAL, RESPONDENT (1).

Administrator-General's Act—Order allowing commission—Right of appeal.

Rule as to rate of commission.

An order passed by a single Judge of the High Court under Act II of 1874, s. 27, allowing to the Administrator-General commission at a certain rate, is subject to appeal to the High Court under the 15th clause of the Letters Patent. [*The Justices of the Peace* v. *Oriental Gas Company* (*Limited*) (2) and *Subái* v. *Ahmedbhái Habibhái*(3) distinguished from *DeSouza* v. *Coles*(4) and from the present case.]

Though such order, being discretionary, would not under ordinary circumstances be interfered with on appeal, yet, where it is not in accordance with the rule laid down in s. 54 of the Act, the Appellate Court will interfere to rectify it.

Where there has been only collection, but no distribution of the assets by the Administrator-General, such order ought, in accordance with the rule laid down in s. 54 of the Act, to award only half of the full commission of 5 per cent.

This was an appeal against an order of Mr. Justice Kernan(5) by which the Letters of Administration to the estate and effects of Lee Chengalroya Naicker, deceased, granted to the respondent were revoked, and the respondent was allowed a commission of 4 per cent. upon all property belonging to the said estate which had come to his hands as administrator thereof. The appeal was

(1) Appeal No. 31 of 1876.
(2) 8 Ben. L. R., 433.
(3) 9 Bom. H. C. R., 398.
(4) 3 Mad. H. C. R., 384.
(5) Dated 9th September 1875.