

for interest at the contract rate of 18 per cent. simple interest from the date of the plaint to the date of the decree.

“Mr. *Gopala Chari* contends that it is in the discretion of the Court under Section 209 of the *Civil Procedure Code* not to give the contract rate, but such rate as the Court thinks reasonable. However, he very frankly admits that Act XXVIII of 1855 by Section 2 directs the Court to give the contract rate up to the date of the decree.

“Section 209 does not expressly refer to suits in which interest has been contracted for. The case *Carvalho v. Nurbibi* (I. L. R., 3 Bom., 202) does not contain any reference to Act XXVIII of 1855. We allow 18 per [127] cent on the principal sum of Rupees 14,000 from the date of the plaint to the date of the decree of the Subordinate Court (1st March 1879). We declare the plaintiffs entitled to their costs of this suit, to be recovered along with their mortgage debt, and also entitled to recover interest on the aggregate sum of principal, interest and costs, including the costs of this appeal, at 6 per cent. until payment from the date of the decree of the 1st March 1879, and we declare the same is well charged on the estate lands and premises in the mortgage specified, and, in default of payment of such aggregate sum of principal, interest and costs, within six months from this date we direct that the said estate land and premises be sold for payment thereof.”

NOTES.

[INTEREST—CONTRACT RATE.

A creditor is entitled to interest at the contract rate till the date of the decree :—(1889) 12 Mad. 485.]

[3 Mad. 127.]

APPELLATE CIVIL—FULL BENCH.

The 1st April, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, MR. JUSTICE INNES,
MR. JUSTICE KERNAN, MR. JUSTICE KINDERSLEY, AND MR. JUSTICE
MUTTUSAMI AYYAR.

Alagirisami Naiker, Agent of the Shivaganga Zamindari.....(Plaintiff)
versus

Innasi Udayan and another.....(Defendants).*

*Patta—Rent Recovery Act, Section 4, 7, 87—Small Cause Court jurisdiction—
Question of title.*

If a *bonâ fide* question of title arises incidentally in a Small Cause suit, the Court should determine it.

A patta which professes to make the tenant liable to the person tendering it for lands not held, as well as for lands held of such person, is an improper one, and not one which the tenant is bound to accept.

* Case stated by the District Munsif of Shivaganga in a Small Cause suit on 18th December 1879.

THIS was a case referred by the District Munsif of *Shivaganga* under Section 617* of the *Civil Procedure Code*.

The plaintiff, as Agent of the *Shivaganga* Zamindari, sued to recover Rs. 24-1-10, being the tirva and other dues, as well as the melvaram rent due for Fasli 1285 (1875-76) for the lands in first defendant's possession, alleging that a patta (Ex. A) was tendered for that fasli years by the then Zamindar and declined by first defendant. First defendant denied the tender of any patta for Fasli 1285 (1875-76), and contended that he was not bound to [128] accept such a patta as Ex. A. He contended also that the Court had no jurisdiction as a Small Cause Court, to entertain this suit, because two-thirds of the land for which rent was claimed belonged to another Zamindar, *Mutturamalinga Tevar* (who, on his own motion, was made second defendant and claimed to be owner of two-thirds of the land as alleged by first defendant). In conclusion, defendant pleaded that he had paid all arrears due for the remaining one-third of the land to the Agents of the *Shivaganga* Zamindar.

The Munsif found that the patta was tendered; that a *bonâ fide* question of title arose between second defendant and plaintiff; that he had no jurisdiction therefore to try the suit as far as the rent for two-thirds of the land was concerned; and that defendant had not paid the arrears due on the remaining one-third of the lands to the *Shivaganga* Zamindar.

Being in doubt whether he could enforce plaintiff's claim for arrears of rent due on the one-third of the lands admittedly belonging to the *Shivaganga* Zamindar, owing to the objection taken to the form of the patta tendered (Section 7, Act VIII of 1865), the Munsif referred the following question to the High Court:—

"Whether, if a patta proved to have been tendered is an improper one as regards a part and a proper one as regards the rest of its terms, the Courts have power to reject the improper part and enforce the rest of the terms of the same?"

Neither plaintiff nor defendants were represented by Counsel.

The following Judgment was delivered by the Full Bench (TURNER, C.J., INNES, KERNAN, KINDERSLEY and MUTTUSAMI AYYAR, JJ.):—

Judgment:—It was decided by the Full Bench in *Gopalasami Mudali v. Mukkee Gopalayyar and others* (7 M. H. C. R., 312) that the provisions of Section 7† of the *Rent Recovery Act* debarred a landlord of the class mentioned in Section 3 from suing in any Court for arrears of rent, or to enforce the terms of a tenancy in any other way, unless the plaintiff had tendered such a patta

*[Sec. 617:—If before or on the hearing of a suit or appeal in which the decree is final, or if in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document which construction may affect the merits, arises, on which the Court trying the suit or appeal or executing the decree entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.]

† [Sec. 7:—No suit brought, and no legal proceedings taken to enforce the terms of a tenancy, shall be sustainable unless Pattahs and Muchilkas have been exchanged as aforesaid, or unless it be proved that the party attempting to enforce the contract had tendered such a Pattah or muchilka as the other party was bound to accept, or unless both parties shall have agreed to dispense with Pattahs and Muchilkas. Such tender shall be sufficiently evidenced by such proof of service as is provided for by section 89 in the case of notices. But it shall not be necessary to send duplicates of such documents to the Collector.]

as the defendant was bound to accept. In the present instance the patta tendered was disputed on the ground that it professed to make defendants liable to the person tendering it for land which they [129] did not hold of him. Section 87 says: "Except as hereinbefore provided to the contrary, land-holders and others shall be at liberty to file suits in the Civil Courts for arrears of rent."

The provision of Section 7 already quoted falls within the exception to Section 87, and precludes a suit for arrears of rent unless the conditions required by Section 7 have been fulfilled. There was no acceptance of the patta in this case, and if (as is alleged by the defendants) it was wrong in one of the essential particulars—local description and extent (see Section 4)—it was not such a patta as defendants were bound to accept. We therefore answer the question in the negative, assuming that the patta tendered was not a proper patta. It is observed that the District Munsif has not decided the question whether the patta was, or was not, proper. He conceived that as there was a *bona fide* question of title as to part of the land included in the patta, the Small Cause Court had no jurisdiction over that part of the suit. But it was quite competent to the Small Cause Court to decide the point of title incidentally, and the District Munsif must do so in order to dispose of this suit.

[3 Mad. 129.]

APPELLATE CRIMINAL.

The 20th April, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE HUTCHINS.

The Vice-President of the Municipal Commission, Cuddalore.....(Complainant)
versus
J. H. Nelson.....(Defendant).*

Towns Improvement Act, Madras Act III of 1871, Secs. 58-62—Liability to profession tax—construction of fiscal Acts.

In construing enactments creating fiscal obligations, provisions declaring the liability to the tax are to be distinguished from those providing for its imposition. The machinery for the imposition of the tax may be independent of the obligation of the tax-payer.

The duty of paying profession tax under Section 58, Madras Act III of 1871, is independent of the obligations of registration and taking out a certificate, which precede it in the same section.

[130] *Per HUTCHINS, J.*—Section 61 is not to be construed so as to prevent the Commissioners from adding to the list new names or persons not in the town at the beginning of the year.

The defendant arrived at Cuddalore on the 2nd of April 1880 and drew pay as District and Sessions Judge of South Arcot from 1st April 1880.

The Municipal Commissioners served defendant with notice of assessment in September 1880, and subsequently proceeded against him for non-payment

* Revision Case No. 6 of 1881 of Cal. Case No. 67 of 1880 before the Joint Magistrate of South Arcot, referred by the District Magistrate of South Arcot.