NOTES.

[I. HINDU LAW—WIDOW'S ALIENATIONS HOW FAR BINDING ON ADOPTED SON—

(i) When the alienation is *proper*, *i.e.*, for necessary purposes, it will bind the son subsequently adopted (1902) 26 Mad., 143 ; (1908) 33 Bom., 88 ; (1904) 14 M. L. J., 310.

(ii) When the alienation is *improper*.

There is a conflict of opinion on this point. BHASHYAM IYENGAR, J., in *Sreeramulu* v. *Kristnamma*, (1902) 26 Mad., 143, expressed the view that alienations by a widow, though they may be improper and made in view of adoption, will yet be binding on the adopted son during her lifetime.

But this view was strongly criticised by CHANDARVARKAR, J., in (1908), 33 Bom. 88, where he holds that such alienations will not be binding on the subsequently adopted boy and that he can dispossess the alienee.

See (1894) 19 Bom. 809 ; (1887) 11 Bom. 609 : 8 Bom. H. C. R. A. C. J. 67.

See also (1904) 32 Cal. 165, where it was held that the cause of action to set aside alienation accrues during his lifetime.

II. AGREEMENTS BY WIDOW BEFORE ADOPTION—

(i) *With the minor* :—

Held valid when it gave her largest possible discretion with regard to management, &c. :—(1887) 11 Bom., 381.

(ii) *With the natural father of the adopted boy* :—

"Natural father not legally incapable to enter into agreement on behalf of the adopted boy, provided the agreement is fair and reasonable and is for the minor's benefit" :—(1904) 27 Mad., 517, *F. B.*=14 M. L. J. 31, where moiety of the interest in her husband's property was reserved to her during her lifetime in case of disagreement between widow and the adopted boy.

III. WHEN RIGHT OF ADOPTED SON COMMENCES—

It was held to commence from the date of adoption and not from the death of the adoptive father:—(1902) 26 Mad., 143 ; (1905) 2 C. L. J., 87=9 C. W. N., 795. See also 7 M. I. A., 169 ; 4 Mad., 160 ; 21 Mad., 10 (16, 17).]

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[167] APPELLATE CIVIL.

The 20th September, 1881.

PRESENT :

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

Mahomed Yakub Sahib.....(Plaintiff), Appellant

and

Mahomed Jaffer Ali Sahib.....(Defendant), Respondent*.

Rent Act—Madras Act VIII of 1865, Section 10—Appeal from order—Default.

No appeal lies to the District Court from an order passed on an application to eject a tenant under Section 10 of the Rent Act (Madras Act VIII of 1865).

* C. M. S. A. No. 484 of 1881 against the order of C. G. Plumer, District Judge of North Arcot, confirming the order of D. Buick, Sub-Collector of North Arcot, dated 9th April 1881.

Quære: Whether a Collector can enforce ejectment for the default specified in Section 10 of the Rent Act where the ultimate judgment in the case had been that of An Appellate Court and not of his own Court.

Semble: "Default" in Section 10 of the Rent Act means wiful default.

THE appellant in this case applied to the Sub-Collector of North Arcot under Act VIII of 1865, Section 10* (Madras Rent Act), to eject the respondent from certain land on the ground that the respondent had been directed by the Sub-Collector to accept a patta and execute a muchalka to appellant, as provided in Section 10 of the Rent Act and that a patta had been tendered within ten days, but had not been accepted.

The Sub-Collector found that there had been no wilful default such as to justify ejectment under Section 10 of the Rent Act, and this order was confirmed on appeal by the District Judge.

The appellant appealed to the High Court on the ground that the respondent should have been ejected, whether the default was wilful or not, and that no discretion was given to the lower Courts by Section 10 of the Rent Act

Nammaya Chettiar for Appellant.

Sadagopachariar for Respondent.

The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

Judgment:—The first question which arises in this appeal is whether it is competent to us to entertain it, and, indeed, whether it [168] was competent to the Judge to entertain an appeal. The only section in the Rent Act which confers on a Dirtrict Court Jurisdiction to entertain an appeal is the 69th† section, and from the place which that section occupies in the Act, following a number of sections prescribing the procedure to be followed in the trial of summary suits, and immediately following a section which declares that, in such suits, the Collector shall pronounce judgment and what are to be the form and contents of the judgment, it seems reasonable to hold that a right of appeal was given only from *judgments* in summary suits. Section 76, although it is expressed awkwardly, confirms this view, "No judgment of a Collector and no

* [Sec. 10:—In adjudicating the suits specified in the preceding section, the Collector shall first enquire whether the party sued was bound to accept a putta and give a muchalka, and unless this be proved the suit shall be dismissed with costs. Should the plaintiff establish the above point, the Collector shall enquire whether the putta tendered is a proper one. If he be of opinion that it is a proper one, he shall pass a judgment directing the defendant to accept the putta and to execute a muchalka in accordance with it, and to make good any damages that may have been incurred by his previous refusal. If the Collector shall be of opinion that the putta tendered is not a proper one, he shall decide, in the mode prescribed in the next following section, what putta ought to be offered, and shall then pass a judgment ordering the defendant to accept such putta and to execute a muchalka in accordance with it. If within ten days from the date of the Collector's Judgment the defendant shall not have accepted the putta as approved or amended by the Collector as aforesaid, and shall not have executed a Muchalka in the terms of the said Putta, the Collector, on application made to him by the plaintiff, and on proof of such default on the part of the defendant, shall pass an order for ejecting the defendant.]

Course of adjudication in suits specified in the preceding section.

† [Sec. 69:—A regular appeal shall lie to the Zilla Judge, from all judgments passed by a Collector under this Act; provided that the appeal be presented to the Zilla Court within 30 days from the date of the Collector's Judgment. But no judgments of a Collector under this Act shall be set aside for want of form, or for irregularity in procedure; but upon the merits only.]

Appeal within 30 days.

To be only upon the merits.

order passed by him after decree and relating to the execution thereof shall be open to revision otherwise than by an appeal to the Zilla Court, except as is allowed by Section 58."*

Here judgment is clearly intended to be something distinct from an order after decree, and in a recent case (C. M. P., 348 of 1880) it was held that the words " appeal to the Zilla Court " applied not to orders after decree in respect of which no such appeal has been given, but to judgments from which an appeal is allowed by Section 69. The application that was made to the Collector in the case before us was not an application which would result in a judgment in the sense in which that term is used in Section 69, and we find no provision for an appeal from an order passed on such an application any more than from an order passed in execution of decree. We may also observe that the provisions of Section 10, under which the application was made, in terms apply to cases in which the Collector's judgment becomes final. They do not expressly authorise the issue of an order of ejectment if, within ten days after the judgment of the Appellate Court, the tenant has neglected to execute a muchalka. This may not have been an accidental omission. Where the Appellate Court is at a considerable distance from the land, it may be many days before it comes to the tenant's knowledge what are the terms of the tenancy which the Appellate Court has imposed on him.

We do not desire to do more than to point out there is room for doubt whether a Collector can enforce ejectment for the default specified, when the ultimate judgment has been that of an Appel-[169]lant Court and not of his own Court; but if such a power is to be inferred, there is stronger ground for the reasonable construction placed by the Collector on the term " default," namely, that it means wilful default, and not a default, which may have been unavoidable.

We dismiss the appeal with costs.

NOTES.

[This case *was dissented* from on the question of there being an appeal or not against an order of the Collector under Sec. 10 of the Madras Act VIII of 1865 on an application to eject a tenant in (1899) 22 Mad. 436. *See* also (1902) 25 Mad. 613.]

*[Sec. 58 :—No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance. But in all such cases, if the party against whom judgment has been given shall appear, either in person or by agent, if a plaintiff within fifteen days from the date of the Collector's order, and if a defendant within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shall show good and sufficient cause for his previous non-appearance and shall satisfy the Collector that there has been a failure of justice, the Collector may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and alter or rescind the decree, according to the justice of the case. But no decree shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.]

No appeal where judgment on default or *ex parte*.

Suit may be revived.