

NOTES.

[I. APPLICABILITY OF THE MAXIM "CROWN IS NOT BOUND BY A STATUTE UNLESS EXPRESSLY NAMED" TO INDIAN STATUTES—

This point is exhaustively treated by BHASHYAM AYYANGAR, J. in 25 Mad. 457 where he comes to the conclusion that such statutes bind Government although Government is not named in them, unless the very nature of the duty or tax is such as to be inapplicable to Government.

In 9 Mad. 175 the question as to how far Crown is bound by laws of Limitation prior to IX of 1871, not decided.

II. EXTENSION OF THE PRINCIPLE OF THIS CASE—

The inference which forms the ground of decision in this case cannot be extended to Sec. 26 of the Limitation Act of 1871 which relates to an entirely different matter from the limitation of suits, viz., to a branch of substantive law and the creation of rights by the enjoyment of them. Hence no right of easement can be acquired against Crown under Sec. 26 of Act XV of 1877 :—14 Bom. 213.

See 7 Bom. 552 footnote for the same view as in this case.]

[4 Mad. 157.]

APPELLATE CIVIL.

The 4th March and 15th September, 1881.

PRESENT :

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

Mahalinga Rau.....(Plaintiff). Appellant

and

Vencoba Ghosami and others.....(First to third and fifth Defendants),
Respondents.*

Religious Endowment Act, Section 14—Special jurisdiction, Suit to recover land for temple, not within.

The provisions of Section 14† of Act XX of 1863 (Religious Endowments Act) do not oust the jurisdiction of the ordinary Courts except in the cases specified therein.

* Appeal No. 130 of 1880 against the decree of G. A. Parker, Acting District Judge of South Tanjore, dated 21st September 1880.

† [Sec. 14 :—Any person or persons interested in any Mosque, Temple, or religious establishment, or in the performance of the worship or of the service thereof, or the Trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, Manager, or Superintendent of such Mosque, Temple, or religious establishment, or the member of any Committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such Trustee, Manager, Superintendent, or member of such Committee, in respect of the trusts vested in, or confided to, them respectively, and the Civil Court may direct the specific performance of any act by such Trustee, Manager, Superintendent, or member of a Committee, and may decree damages and costs against such Trustee, Manager, Superintendent, or Member of a Committee, and may also direct the removal of such Trustee, Manager, Superintendent, or Member of a Committee.]

A suit for recovery of immoveable property on behalf of a temple alleging, by way of misfeasance and breach of trust, that the defendants (the managers of the temple) had forged documents and usurped temple property, without any prayer for the removal of the managers, or for damages, or for a decree for specific performance of any act by the managers, is not a suit for which a special jurisdiction is provided by the Act.

THE facts and arguments in this case sufficiently appear in the Judgment, of the Court (TURNER C.J., and KINDERSLEY, J.).

Mr. *Shaw* for Appellant.

Balaji Rau for Respondents.

[158] Judgment:—The plaintiff alleging himself to be a disciple of a mattam having a religious interest therein, and sharing in the offerings, has brought this suit on behalf of the mattam to recover five items of property for the mattam, with specified profits, and for a declaration that the property is the property of the mattam.

The first two defendants, who were alleged to be managers of the mattam, made no defence.

The third defendant denied that items 3, 4 and 5 were the property of the mattam. He stated that those items had been the property of the father of the first and second defendants and of another person not joined in the suit; that the first defendant had mortgaged them to him on account of previous debts; that he had brought a suit upon the mortgage and obtained a decree against the first and second defendants and their brother, the plea of religious endowment which was then pleaded being overruled; that in execution he (the third defendant) had purchased these items of property and obtained possession in October 1878; and that the first and second defendants had put up the present plaintiff to bring a false suit.

The fifth defendant answered that the first and second defendants' father had sold the ground, item No. 6, to his father in 1841, and that his father and himself had been in possession ever since, erecting shops thereon. The suit as regarded this item was, therefore, barred.

The objection was taken before the District Judge that the suit should not have been brought before the District Court, because it was not such a suit as was provided for by Act XX of 1863. The District Judge allowing the objection dismissed the suit with costs.

The plaintiff appealed to this Court on the ground that the suit fell within the provisions of Act XX of 1863.

Section 14 of the Act in question provides in effect that any person interested in the service of a temple may sue the trustee or manager for any misfeasance, breach of trust, or neglect of duty in respect of the trusts vested in, or confided to them, and the Court may direct the specific performance of any Act by such trustee or manager, and may decree damages against him and may direct his removal.

[159] In the present case it has been alleged by way of misfeasance and breach of trust that the defendants have colluded together and have got up documents to show that the property is the private property of the first and second defendants, and have taken possession of same. But the object of the suit is the recovery of immoveable property for and on behalf of the mattam. Of that property items 1 and 2 are already in the possession of the managers on behalf of the pagoda, and the other items are in the possession of other

persons, who are neither trustees nor managers. There is no prayer for the removal of the managers nor for damages, nor for a decree for specific performance of any act by the managers. It is therefore clear that this suit is not of such a nature that the jurisdiction of the ordinary Courts is ousted or that relief cannot be granted without recourse to the powers conferred by Act XX of 1863 upon the District Court, and consequently it should have been brought in the Court of the Subordinate Judge. *Agri Sharma Embrandri v. Vishnu Embrandri* (3 M. H. C. R., 198).

The mistake was not discovered until it was pointed out by the contesting defendants at the final hearing, and the Judge dismissed the suit with costs, on the ground that it was not rightly instituted under Act XX of 1863 in the District Court. The appellant urges that, if the suit could not be entertained in the District Court, the plaint should have been returned for presentation in the proper Court. We assent to this contention. The order of the District Court dismissing the suit is set aside, and the Judge is directed to return the plaint to the plaintiff for presentation in the proper Court, but the appellant must pay the respondent's costs incurred hitherto.

NOTES.

[When there is a claim for the removal of the manager, a declaration that property belongs to an institution and that a mortgage over it is not binding on the institution, may be asked for and made in suit under the Religious Endowment Act, when such declaration is ancillary to the claim for removal :—24 Mad. 249.]

[160] APPELLATE CIVIL.

The 15th September, 1881.

PRESENT :

SIR CHARLES A. TURNER, K.T., CHIEF JUSTICE AND
MR. JUSTICE KINDERSLEY.

Lakshmana Rau.....(Plaintiff) Appellant

and

Lakshmi Ammal and others.....(Defendants), Respondent.*

*Hindu Law—Alienation by widow in contemplation
of adoption—Title of adopted son.*

The power of a Hindu widow, with authority from her husband to adopt, to make *bona fide* alienations, which would be binding on the reversioners if no adoption took place, is not affected or curtailed by the fact that it is exercised in contemplation of adoption and in defeasance of the right of the son who is about to be adopted.

The title of a son adopted by a widow under authority from her husband does not relate back to the death of the deceased.

Sebmle : A minor taken in adoption is not bound by the assent of his natural father to terms imposed as a condition of the adoption.

THE facts and arguments in this case appear sufficiently for the purpose of this report in the Judgment of the Court (TURNER, C.J., and KINDERSLEY, J).

* Appeal No. 22 of 1880 against the decree of T. V. Ponnusami Pillai, Subordinate Judge of Kumbakonam, dated 27th November 1879.