purport to exercise authority in the islands in virtue of his office of Joint Magistrate of Malabar, but in virtue of his office of Sub-Collector of Malabar.

This being so, we must hold that in convicting and punishing the accused whose cases are now before us, he acted without authority, and that his proceedings were void and must be quashed.

The proceedings being void *ab initio* for the reasons stated, it becomes unnecessary to notice the other irregularities alleged against Mr. Twigg's proceedings. These latter would only require consideration in case it had been shown that Mr. Twigg had proceeded or professed to proceed under the Indian Penal Code or Criminal Procedure Code.

For the reasons stated, we quash the proceedings and direct that the accused Kunnangelath Cheria Koya and Tanga Koya be set at liberty and that the fines imposed on all or any of the accused, if they have been paid or collected, be refunded.

The orders requiring the accused to give security to keep the peace and be of good behaviour are also quashed.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

EASWARA DOSS (PLAINTIFF), APPELLANT,

v.

PUNGAVANACHARI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1890. February 14.

Rent Recovery Act (Madras)—Act VIII of 1865, *ss.* 3, 7, 51, 87—*Jurisdiction of Civil Courts—Suit to enforce acceptance of improper patta—Decree for rent—Limitation—Evidence of local usage—Judgments not* inter partes.

A landlord sued his tenants in the Court of a District Munsif to enforce acceptance of pattas and the execution of muchalkas by them, and to recover arrears of rent. The suits were filed more than thirty days after tender of the pattas, which were found to contain certain improper stipulations:

Held, (1) the suit was not barred by the rule of limitation in Rent Recovery Act, section 51;

(2) the Civil Court had jurisdiction to entertain the suit and to modify the pattas where they were found to be improper and to enforce the execution of corresponding muchalkas;

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* Second Appeals Nos. 197 to 208, 265 and 541 to 551 of 1889.

EASWARA DOSS v. PUNGAVANACHARI.

(3) the claim for rent should have been disallowed on the ground that the pattas as tendered were improper pattas—*Narasimma* v. *Suryanarayana*(1) distinguished.

Per cur.—"The decisions [as to rates of rent] in previous suits are admissible "as evidence of local usage, though the tenants in the cases before them were not "parties to them."

SECOND APPEALS against the decrees of S. T. McCarthy, District Judge of Chingleput, in appeal suit No. 182 of 1888, &c., modifying the decrees of S. A. Krishna Row, District Munsif of Poonamallee, in original suit No. 302 of 1885, &c.

Suits by the Zamindar of Pallavaram against his tenants to enforce the acceptance of pattas and the execution of muchalkas and to recover arrears of rent for *fuslis* 1291–93. The suits were filed more than two months after the tender of the pattas. The further facts of these cases appear sufficiently for the purpose of this report from the judgment of the High Court.

The District Munsif and, on appeal, the District Judge made certain alterations in the pattas with reference to stipulations for the payment of merais, but in other respects their decrees were in accordance with the prayer of the plaint.

The plaintiff preferred second appeal No. 197 of 1889, &c., against the decrees, so far as they modified the pattas, and the tenants preferred second appeal No. 541 of 1889, &c., against the decrees on the ground (among others) that they had been passed without jurisdiction.

Mr. *Subramanyam* for appellant in second appeal No. 197 of 1889 and for respondent in second appeal No. 541 of 1889.

Parthasarathi Ayyangar for respondent in second appeal No. 197 of 1889 and for appellant in second appeal No. 541 of 1889.

JUDGMENT.—In these cases, the plaintiff is the Zamindar of Pallavaram, and the defendants are his Sukavasi tenants. He sued in the Court of the District Munsif of Poonamallee to compel them to accept either the pattas tendered by him or such other pattas as the Court might consider proper, to execute muchalkas in accordance with them and to pay the rent due for three years, viz., *fuslis* 1291–93. The Judge held that the tenants were at liberty to pay merais to those who were entitled to them direct, and that no tank merai was payable to the plaintiff, and he

(1) I.L.R., 12 Mad., 481.

decreed the claim except so far as it related to the merais. The plaintiff appeals in second appeals Nos. 197 to 208 and 265 of 1889 and contends that the merais should also have been decreed to him. The defendants appeal in second appeals Nos. 541 to 551 of 1889 and object to the rest of the decree on several grounds. It is first urged on their behalf that a suit to enforce the acceptance of a patta is a special remedy provided by a special Act, and that it can only be available in a Revenue Court. But it was held by this Court in *Karim* v. *Muhammad Kadar*(1) in 1879 that a regular suit might be maintained in a Civil Court to enforce the acceptance of a patta. The plaintiff in that case asked that the defendant who denied the tenancy might be directed to accept a patta and to execute a muchalka and it was decided that the remedy by summary suit was originally given as an alternative remedy as pointed out in *Gopalasawmy Mudelly* v. *Mukkee Gopalier*(2), and that there was nothing in Act VIII of 1865 to show that the landlord was debarred from the remedy by a regular suit. It was observed that section 3 of Act VIII of 1865, imposed on a landholder the obligation to enter into written engagement with his tenants, and that if the action of the tenants precluded him from doing what the law enjoined him to do, and without which he was disabled from making use of the summary remedies under the Act, he would have the right of action to compel the tenants to do that which would enable him to conform to the law, unless such right of action was taken away by other provisions of the law. We may add that the landlord is also precluded by section 7 of the Rent Recovery Act from suing for rent or otherwise enforcing the terms of a tenancy in a Civil Court unless pattas and muchalkas have been exchanged as directed by section 3, or unless the party attempting to enforce the contract has tendered such a patta or muchalka as the other party was bound to accept or execute or unless both parties have agreed to dispense with pattas and muchalkas. The principle recognized by the decision was that a suit to enforce the acceptance of a patta is, when brought in a Civil Court, a remedy necessary to the fulfilment of the obligation imposed upon the landlord by section 3, and to the exercise of his right to sue in a Civil Court for arrears of rent or for enforcing other terms of the tenancy which he is at

(1) I.L.R., 2 Mad., 89. (2) 7 M.H.C.R., 312.

EASWARA DOSS v. PUNGAVANACHARI.

liberty to do under section 87 of Act VIII of 1865. The decision in *Narasimma* v. *Suryanarayana*(1) to which our attention has been drawn is not in conflict with the case already cited. It was observed in that case also that the object of the Act in requiring the exchange of patta and muchalka was to ensure the existence of evidence of the terms of the holding, and that, in order to secure this evidence, a landlord might maintain a declaratory suit and the execution of a muchalka by the tenant might be treated as a relief consequential on such declaration. It is open to the landlord to ask for a declaration that the patta tendered by him was the one which it was lawful for him to tender, and if it was not, what was a proper patta which he was bound to tender, and the observation, therefore, that the Court was not at liberty to amend the patta had reference to the frame of the plaint in that particular case and the form in which a declaration ought to be made with reference to it. We also find that *Karim* v. *Muhammad Kadar*(2) was not cited and overruled in *Narasimma* v. *Suryanarayana*(1). The first objection must therefore be disallowed.

Another contention is that the Courts below were in error in decreeing rent whilst they found that the patta tendered required to be modified so far as it related to the merais claimed from the tenants. They considered that the rates of rent claimed were proper and that the insertion in the pattas of the item of merais which were in their opinion not due to the landlord either wholly or partly was not important. But it is provided by section 4 of Act VIII of 1865 that the pattas shall also include the fees payable with the rent according to local usage, and if they were not really due and yet were included in the patta tendered by the landlord, we cannot say that the patta was one which the tenant was bound to accept within the meaning of section 7 of Act VIII of 1865. The patta must be regarded as indivisible, otherwise the terms of the tenancy will be left in part uncertain and the intention of the legislature thereby frustrated. We must set aside the decree of the District Judge so far as it directs payment of rent and order that the claim for rent be disallowed on the ground that the patta tendered was not the proper patta.

The next objection taken before us is that the suit was barred by section 51 of Act VIII of 1865. The remedy sought to be

(1) I.L.R., 12 Mad., 481. (2) I.L.R., 2 Mad., 89.

enforced is not under the Act, but it is a regular suit for a declaration with such consequential relief as may be lawfully awarded. We are, therefore, of opinion that section 51 is no bar to the suits before us.

Nor do we consider that the Judge's finding as to the rates at which rent is payable is open to any valid objection. The decisions in previous suits are admissible as evidence of local usage, though the tenants in the cases before us were not parties to them. There is also other evidence on the record in support of the finding.

It is urged on behalf of the plaintiff, who is the appellant, in second appeals Nos. 197 to 208 and 265, that merais are payable to him according to local usage. On this point the evidence was conflicting, and, though the District Munsif decided in his favor except as to the tank merai and the merai payable to Village Officers, the Judge disagreed with him and found that the merais were payable by tenants so far as they were due direct to the parties entitled to them. *Primâ facie* tenants are liable to pay only to the parties who are entitled to them unless a special usage to the contrary is clearly established. There was evidence upon which the Judge was entitled to come to the conclusion at which he arrived and we are not at liberty to interfere with his finding in second appeal.

In modification of the decree of the District Court, we direct that the plaintiff's suit be dismissed so far as it relates to rent and that the decree be otherwise confirmed. The costs of second appeals preferred by the tenants, in Nos. 541 to 551, will be assessed proportionately. The second appeals preferred by the landlord, in Nos. 197 to 208 and 265, are hereby dismissed with costs.