demarcating the area in their possession and defining it. The Counsel for the respondents is unable to meet this objection. We must, therefore, hold that this litigation was practically unnecessary. On this ground we decree that the respondents do bear their own costs and pay the appellants' costs throughout, and, with this modification, confirm the decree of the Lower Appellate Court. As to the memorandum of objections, it must be dismissed. The damages claimed were in the nature of a fine claimed for vexatious litigation, and the Judge was right in holding that such claim must be disallowed.

ÁNDI v. THATHA.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusámi Ayyar.

LAKSHMANA AND ANOTHER (DEFENDANTS), APPELLANTS,

and

RÁMACHANDRA (PLAINTIFF), RESPONDENT.*

1887. Feb. 14, April 19.

Landlord and tenant—Forfeiture—Waste—Planting a mango tope on dry land.

In the absence of local custom, tenants are not entitled to convert land under cultivation into a mango grove. Tenants from year to year are not at liberty to change the usual course of husbandry without the consent of the landlord.

SECOND appeal against the decree of J. Kelsall, District Judge of Vizagapatam, in Appeal Suit No. 259 of 1885, reversing the decree of V. A. Narasímha, District Múnsif of Párvatipúr, in Original Suit No. 5 of 1884.

This was a suit to eject the defendants from certain lands of which they were tenants from year to year, on the ground that they had committed waste by planting mango trees on some dry land which formed part of their holding.

The District Múnsif dismissed the suit. His decree was reversed on appeal by the District Judge, who observed :—"The land is dry land, but the plaintiff hopes at some future time to convert it into wet. Whether it will be practicable for him to do so is beside the question. He leased the land to defendants for cultivation and

* Second Appeal No. 547 of 1886.

LAKSHMANA v. RÁMA-CHANDRA.

has a right to be protected against the defendants so dealing with the land as to unfit it for cultivation now and for the future."

The decree of the District Court directed the defendants to remove the young trees planted, and generally before the end of the current fasli to restore the land to the condition in which it was when leased to them, and "in default of their so doing I direct that from that date they be ejected from the land."

The defendants preferred this second appeal.

Mr. *Michell* for appellants.

Planting mango trees is not waste; and in any case since it was only on the dry land that the mango trees were planted, the forfeiture was incurred, if at all, only in respect of the dry land which bears a distinct and separate rent from that paid in respect of the wet land.

The Acting Advocate-General (Hon. *J. H. Spring Branson*) for the respondent cited *Bholai* v. *The Rajah of Bansi*(1).

The further arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Muttusámi Ayyar, J.).

JUDGMENT.—The respondent is renter of the zamíndárí of Merangi under the management of the Court of Wards, and the appellants are raiyats on that estate. Their holding consists partly of wet and partly of dry land assessed at Rs. 83-11-6 and Rs. 10, respectively. In September 1883, they planted a mango tope on a portion of the dry land which was usually cultivated with a dry crop and thereby rendered it unfit for dry cultivation. Thereupon the renter sued to eject them, and the contest was whether they were liable to be ejected on the ground that they planted the mango tope otherwise than with the permission of their landlord. It is found by the Judge that they were only tenants from year to year, that the land converted into mango garden would, if under dry cultivation, ordinarily yield an eight-anna crop, and that there was no special custom in the village in justification of their acts. He came to the conclusion that the appellants were not at liberty so to deal with the land as to render it unfit for cultivation now and for the future, and directed them to remove the young trees planted, fill up the pits dug and generally before the end of the fasli to restore the land to the condition in which it was when it was

(1) I.L.R., 4 All., 174.

leased to them, and in default of their doing so, decreed their ejectment. From this decree the renter has preferred no second appeal and it is not necessary to consider whether the decree is right in ordering a conditional ejectment. To that extent the decree is in the appellants' favor, and we are not prepared to attach weight to the contention that the Judge had no power to grant prospective relief, nor do we consider that in the absence of a local custom, tenants are entitled to convert the land under cultivation into a mango grove without the consent of their landlord and thereby change the nature of the property. As tenants from year to year, the appellants were under the obligation to restore the land in the condition in which it was when it was leased to them, and they were not at liberty to change the usual course of husbandry except with the consent of their landlord. Having regard to the form in which the decree is made, we do not consider them to be entitled to notice after committing waste. The decision of the Judge is right, and we dismiss this second appeal with costs. But in view to giving the appellants sufficient time to comply with the direction contained in the decree, we order that the current fasli mentioned in the decree of the Lower Appellate Court be taken to be the fasli current at the date of this decree.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

1887. July 8.

QUEEN-EMPRESS

against

JOGAYYA.*

Penal Code—Act XLV of 1860, *s.* 504—*Intent to provoke a breach of the peace.*

A abused B to such an extent as to reduce B to a state of abject terror:

Held, that A having given to B such provocation as would under ordinary circumstances have caused a breach of the peace was guilty of an offence under s. 504 of the Penal Code.

THIS case was reported for the orders of the High Court under

* Criminal Revision Case No. 102 of 1887.