That case has, therefore, no bearing upon the present, which is a suit to set aside an appointment. CHANDRAMMÁ v. VENKATRÁJU.

Under the circumstances the decree passed by the Subordinate Judge was right and the second appeal must be dismissed with costs.

APPELLATE CIVIL.

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

RÁMACHANDRA (PLAINTIFF), APPELLANT,

and

NARÁYANASÁMI (DEFENDANT), RESPONDENT.*

1886. November 16. 1887. March 30.

Rent Recovery Act (Madras Act VIII of 1865), s. 13—who entitled to proceed under—Attachment held good as to part.

A granted two villages in perpetuity to B under a deed, reserving a certain rent to himself which was to be recovered "according to the Act" if it fell into arrear. The rent remained unpaid for two years, and A obtained an attachment for the whole arrear under the Madras Rent Recovery Act:

Held, (1) that A was entitled to proceed as landlord under the Madras Rent Recovery Act;

(2) that the attachment held good for such amount of rent as was recoverable under that Act—*Rámasámi* v. *The Collector of Madura*(1) discussed.

APPEAL against the decree of H. T. Knox, Acting District Judge of North Arcot, reversing the decree of G. W. Fawcet, Acting Sub-Collector of North Arcot.

This was a summary suit brought under Act VIII of 1865 against the manager of the Kangundi Zamíndárí under the Court of Wards to procure the release of property alleged to have been illegally distrained and to recover damages.

The plaintiff held under a deed of grant from the Kangundi Zamíndár, (exhibit A) dated 22nd October 1875, therein described as a "permanent pattá" of certain villages, reserving a rent of Rs. 350 "payable according to the kist bunds of each year," with regard to which it contained the following term:—

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* Second Appeal No. 963 of 1885. (1) I.L.R., 2 Mad., 67.

RÁMACHANDRA v. NARÁYANA-SÁMI.

"If it is allowed to fall into arrears without being paid in the said manner, the same will be recovered according to the Act with interest and batta for establishment."

The rent having fallen into arrear for two faslies, the defendant distrained for the whole arrear under Act VIII of 1865. The Sub-Collector held that the plaintiff was not a tenant of the defendant within the meaning of Act VIII of 1865, and that in itself the distraint was illegal "inasmuch as it purported to be on account of arrears due for more than a year," and passed a decree for the release of the property and for damages. The District Judge reversed this decree, and, with reference to an objection as to stamp duty (alluded to in the judgment of the High Court), observed in paragraph 5 of his judgment:—

"The appellant did not pay the stamp duty necessary to cover a claim to recover the property released from attachment, and, as the property is in the hands of the plaintiff, and he will in any case have to proceed against him in a regular suit, does not press his claim."

The plaintiff appealed.

Rámachandra Ráu Saheb for appellant.

Ananda Chárlu for respondent.

Besides the authorities discussed in the judgment *Zinulabdin Rowten* v. *Vijien Virapatren*(1) was cited for the appellant.

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

JUDGMENT.—The plaintiff holds two villages under a permanent lease and the defendant has attached certain properties under the Rent Recovery Act for arrears said to be due for faslies 1292 and 1293. The suit is to set aside the attachment and for damages for illegal distraint.

The Sub-Collector decreed for the plaintiff and awarded Rs. 35 as damages, but the District Judge reversed the decision on appeal and dismissed the suit with costs.

Three points were argued on second appeal:—

(1) That the distraint was illegal, as the defendant had no right to proceed under the Rent Recovery Act.

(1) I.L.R., 1 Mad., 49.

(2) That (granting the defendant had such right) the distraint was illegal, as process must be taken within one year and defendant had distrained for kists of fasli 1292 more than one year due.

(3) That the Court had given a relief not asked for, inasmuch as the property had been returned to plaintiff.

With regard to this last point, there was no necessity for the defendant to pay stamp duty for the recovery of the property which had been restored to plaintiff's possession. The effect of this reversal of the Sub-Collector's decision was to restore the attachment, and the fifth paragraph of the District Judge's decision is based on a misapprehension.

With regard to the second objection there is no reason why the attachment should not hold good for the amount of such kists as may be recoverable under the Act.

The first ground of appeal is the most important, viz., whether defendant is entitled to proceed under the Act at all. The wording of exhibit A shows that the parties regarded the Act as applicable to them, but they would not be competent to legislate for themselves, and could not by mutual agreement give the Revenue Courts Jurisdiction.

It is admitted that under the decisions in *Appásámi* v. *Rámá Subba* (1) and *Subbaraya* v. *Srinivasa* (2) the plaintiff would be a "tenant" within the meaning of the Rent Recovery Act, but it is contended that in passing these decisions the learned Judges overlooked the decision of the Privy Council in *Rámasámi* v. *The Collector of Madura*,(3) in which it was held that the interchange of pattás and muchalkás contemplated by the Act and the remedies provided in ss. 8 and 9 would only be available between landlords and tenants engaged in actual cultivation of the lands. This decision has been followed in *Rámá* v. *Venkatáchalam*.(4)

We are not able to see that there is any irreconcilable conflict in the decisions. It may be that the defendant, and plaintiff, though not landlord and cultivating tenant between whom pattás and muchalkás must be interchanged, or who must have agreed to dispense with pattás and muchalkás, are yet landlord and tenant authorized under s. 13 of the Act to have recourse to the

(1) I.L.R., 7 Mad., 262.
(2) I.L.R., 7 Mad., 580.
(3) I.L.R., 2 Mad., 67.
(4) I.L.R., 8 Mad., 576.

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remedies provided therein. Exhibit A shows that such agreement in writing existed, and that it was understood by the parties that they stood to each other in a relation to which the provisions of the Act would apply. This view is consistent with that taken by Morgan, C.J., in *Gopalasawmy Mudelly* v. *Mukkee Gopalier*.(1)

The decision of the District Judge appears to us to be correct, and we dismiss the second appeal with costs.

APPELLATE CRIMINAL—FULL BENCH.

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

1886. October 13. 1887. April 29.

QUEEN-EMPRESS

against

SHEIK BEARI AND OTHERS.*

Criminal Procedure Code, s. 195—*Sanction to prosecute—Notice to accused.*

A conviction for preferring a false complaint is not illegal only by reason of the prosecution having been sanctioned without notice previously given to the accused.

Sanctioning a prosecution for an offence is a judicial act, and the party to whose prejudice it is done must be previously heard and a judgment formed upon legal evidence. In cases in which the Magistrate dismisses the original complaint upon a report from the police, there is no legal evidence before him on which to form his judgment. In cases, however, in which the Magistrate examines the complainant and hears the evidence and acquits or discharges the accused, and then, without notice to the complainant, sanctions his prosecution for preferring a false charge, sanction cannot be said to be improperly given.

CRIMINAL Revision Cases Nos. 226 and 234 of 1886 were cases taken up by the High Court in the exercise of its powers of revision under ss. 435 and 439 of the Code of Criminal Procedure.

In criminal revision case No. 226 of 1886 the District Magistrate of South Canara had dismissed the charge of preferring a false charge in calendar case No. 12 of 1886, on the ground that the prosecution of the accused had been sanctioned by the Deputy Magistrate of South Canara on the report of the police without an opportunity of proving his case having been given to the accused.

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(1) 7 M.H.C.R., 312.

* Criminal Revision Cases Nos. 226, 234 and 242 of 1886.