The case was stated as follows:—

"Ponnurangam, the accused, a boy of 18, took a cart from his father's mandi, or shop, without his father's knowledge, and sold it, and appropriated the proceeds. He admitted all this, but pleaded, first, that he was undivided from his father and was a joint owner of the cart; and, secondly, that the reason he took the cart was that his father, who was married a second time, does not support either him (accused) or his mother. He kept, he said, part of the proceeds for his own support and sent the rest to his mother.

"The Second-class Magistrate took the accused person's word for all these allegations and found 'he seems to have acted under *bonâ fide* claim of right,' and discharged him."

Counsel were not instructed.

The Court (Kernan and Muttusámi Ayyar, JJ.) delivered the following

JUDGMENT:—The Second-class Magistrate's judgment and order are wrong. Theft of joint property of a family may be committed by one of the family though a co-parcener, if he takes it from joint possession and converts such possession into separate possession—See Weir's Criminal Rulings, p. 154, on s. 379, Indian Penal Code.

The acquittal is set aside and the Magistrate is directed to re-try the case and to have regard to the definition of theft in s. 378, Indian Penal Code, and of the word "dishonestly" in s. 24.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Muttusámi Ayyar.

VENKAPPA AND OTHERS (DEFENDANTS), APPELLANTS,

and

NARASIMHA (PLAINTIFF), RESPONDENT.*

1887. March 2.

Stamp—Court Fees Act—VII of 1870, *s.* 6, *schedule II, art.* 17.

In a suit on a mortgage bond a decree was passed for payment of principal and interest, and in default for sale of the mortgaged property. Some of the defendants filed a memorandum of appeal against so much of the decree as declared the liability of the property, affixing a stamp of Rs. 10 only:

* Referred Case No. 1 of 1887.

VENKAPPA v. NARASIMHA.

Held that the proper stamp to be paid was not Rs. 10 as in the case of a declaratory decree, but on the value of the debt not exceeding the value of the property.

THIS was a case referred to the High Court by J. W. Best, District Judge of South Canara, under s. 617 of the Code of Civil Procedure.

The facts were stated as follows :—

"The object of the original suit was to recover from the Alyasantana family of the defendants, on the responsibility of the mortgaged lands, Rs. 2,169-15-10 due under a mortgage bond; and the court fee paid on the plaint was on this amount, namely Rs. 135.

"Defendants Nos. 3, 4 and 5 denied the plaint mortgage and disputed the chargeability of the debt on the family estate.

"The District Múnsif who tried the suit, finding that the debt was properly chargeable on the family property, decreed the plaint amount with further interest (Rs. 137-8-0) and costs to be paid by defendant No. 1, and, on his default to do so, to be recovered by sale of the mortgaged lands after a specified time.

"Against this decree, defendants Nos. 3, 4 and 5 have presented the appeal in question in order *to exonerate the lands from liability* for the amount decreed.

"The appellants have stamped the appeal with a court-fee of Rs. 10, on the ground that the relief sought in appeal is a mere declaration that the debt is not chargeable on the family property.

"I am of opinion, however, that as what they seek is not a mere declaration to be made use of on some future occasion, but a declaration *with consequential relief* so that the lands may not be sold in execution of the original decree, the appeal should be valued according to the amount of money concerned (as in the Lower Court), and that the court-fee to be paid is the *ad valorem* fee on Rs. 2,169-15-10, namely, Rs. 135 (Chief Justice's ruling—November 1872, quoted in the foot-notes at page 240 of Weir's Digest of Rules, &c., 1883)."

Counsel were not instructed.

The Court (Kernan and Muttusámi Ayyar, JJ.) delivered the following

JUDGMENT:—We agree with the referring officer. There was a decree directing the payment of the amount and in default that the lands of the defendants should be sold and the produce applied to payment of the debt. The defendants appealed against

so much of the decree as declared the liability of their property, and to be released from the decree. The relief they sought was, therefore, not a mere declaratory decree but to be released from the decree. The proper stamp to be paid, therefore, is not Rs. 10 as in a declaratory decree, but on the value of the debt, not exceeding, however, the value of the property.

The case of *Vithal Krishna* v. *Bálkrishna Janárdan* (1) is not in conflict with this, as there the relief sought was only to obtain a declaration of the right claimed.

APPELLATE CIVIL.

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

THOPARA MUSSAD (PLAINTIFF), APPELLANT,

and

THE COLLECTOR OF MALABAR AND OTHERS (DEFENDANTS), RESPONDENTS.*

1886. December 21.

Malabar law—Rights under a kanam—Denial of jenm right by kanamdár—Adverse possession—Limitation—Declaration of escheat.

A. demised certain lands on kanam to B. in 1853. B. afterwards committed an offence under the Mapilla Act and the lands were handed over for the benefit of his representatives to C. Government subsequently, without making A. a party to their proceedings, declared the lands to have escheated, and in 1863 sold them to C. A.'s representatives now sued to recover the lands from C.'s representatives who set up an adverse title and alleged that the suit was time-barred:

Held that C. was, at the time of the escheat, in the position of a manager for mortgagees; that the escheat proceedings of which the mortgagor had no notice did not affect his rights; that denial by the mortgagee in possession of the mortgagor's right to redeem is not sufficient to convert such possession into adverse possession.

APPEAL from the decree of V. P. de Rozario, Subordinate Judge of South Malabar at Palghat, reversing the decree of B. Kamaran Náyar, District Múnsif of Betutnád, in suit No. 359 of 1884.

The facts and arguments appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Parker, J.).

Mr. *Wedderburn* and *Sankara Menon* for appellant.

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(1) I.L.R., 10 Bom., 610.

* Second Appeal 196 of 1886.