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that the object of granting an injunction will not be defeated thereby, and no appeal is provided in case of his refusal. The orders of the Judge were, therefore, *ultra vires*, and we set them aside.

Petitioners will have their costs in both Courts

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

1888. Nov. 27. Jan. 15.

VENKATANARASIMHA (PLAINTIFF), APPELLANT,

v.

SURYANARAYANA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Regulation XXV of 1802 (*Madras*), *s.* 11—*Regulation XXIX of* 1802 (*Madras*), *ss.* 5, 7, 10, 16, 18—*Suit for dismissal of a zamindari karnam—Jurisdiction.*

A suit by a zamindar for the dismissal of a zamindari karnam cannot be entertained by a District Munsif.

The Subordinate Court, and the District Court where there is no Subordinate Court, is the tribunal that has taken the place of the Court of Adawlut of 1802.

APPEAL against the order of G. T. Mackenzie, Acting District Judge of Kistna, made in original suit No. 22 of 1887, directing that the plaint be returned to the plaintiff for presentation in the Court of the District Munsif.

This was a suit filed by a zamindar to obtain the dismissal of defendants who are karnams on his zamindari. The District Judge was of opinion that the Madras Regulations XXV and XXIX of 1802 contained nothing to oust the jurisdiction of the District Munsif within the meaning of s. 11 of the Code of Civil Procedure and observed:—

"I consider that the power to try such suits as this is given to Courts of Judicature generally, and that if the phrase Adawlut of the Zilla is used elsewhere in connection with the subject, it was not intended to restrict this jurisdiction to the District Court, but that the phrase is used merely as a synonym for Court of Judicature."

He accordingly made an order to the effect stated above.

Plaintiff preferred this appeal.

Mr. *Shaw* for appellant.

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* Appeal against Order No. 96 of 1888.

The District Court and not the District Munsif's Court is the successor of the Court of Adawlut, *Ramakistnam* v. *Ragavachari* (1), *Ramachandra* v. *Appayya* (2).

Narayana Rau for respondents.

The suit should have been instituted in the District Munsif's Court under s. 15 of the Code of Civil Procedure. Such Courts are Courts of Judicature within the meaning of Madras Regulation XXIX of 1802, s. 5, which provides for the dismissal of karnams "by the sentence of a Court of Judicature"; and Madras Regulation VI of 1816, s. 12, did not affect their jurisdiction to entertain suits for dismissal of karnams. There is a decision of the Sudder Court precisely in point. *Cottaysami Taver* v. *Darasimaya* (3); *Ramachandra* v. *Appayya* (4) was a second appeal from a District Munsif, and the jurisdiction of the Munsif was taken for granted, as also in *Venkayya* v. *Subbarayudu* (5). *Ramakistnam* v. *Ragavachari* (6) only related to the infliction of fines on karnams, and *Ponnusami* v. *Krishna* (7) turned on the construction of a different Regulation, Madras Regulation IV of 1816.

The further arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

JUDGMENT:—The appellant, the zamindar of Nuzvid, sued for the dismissal of the respondents, karnams in his zamindari. He brought the suit in the District Court of Kistna, but the District Judge held that he had no jurisdiction to entertain it and ordered the plaint to be returned for presentation in the Court of the District Munsif. It is contended for the appellant that the District Court is the Court of competent jurisdiction. The contention appears to us to be well-founded, whether regard is had to the course of legislation or of judicial decisions in this Presidency. The first Regulation on the subject is Regulation XXV of 1802. On referring to s. 11,* we see no reason to doubt that the Court designated as

(1) I.L.R., 3 Mad., 405. (2) I.L.R., 7 Mad., 128.
(3) Sudder Court Rulings, 1853-1855, p. 108. (4) I.L.R., 7 Mad., 128.
(5) I.L.R., 9 Mad., 283. (6) I.L.R., 3 Mad., 405. (7) I.L.R., 5 Mad., 222.

* *Section* 11. "The zamindars or landholders shall support the regular and established number of karnams in the several villages of their respective zamindaris.

"The karnams shall be appointed from time to time by the zamindars, and shall "obey all legal orders issued by them; but the karnams shall not be liable to be "removed from their offices, except by the sentence of a Court of Judicature.

"Where a zamindar, or his under-farmers, tenants or raiyats, may have cause of "complaint against a karnam for breach of his duty, such zamindar shall be free to

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competent to dismiss a zamindari karnam was the Adawlut of the Zilla or the Zilla Court. It is true that in two places in the same section the expression "A Court of Judicature" is used, but the sense in which that expression is to be understood is controlled by the direction contained therein as to the procedure to be followed by a zamindar when he has a cause of complaint against a karnam for breach of duty. The material words are: "The "zamindar shall be free to institute a suit in the Adawlut of the "Zilla for the purpose of bringing such karnam to trial and "punishment, but where a zamindar may deprive a karnam of "his office without such previous regular process, the zamindar "shall be liable to make such satisfaction for the injury as the "Adawlut of the Zilla may decree." Reading, again, ss. 5, 7, 10, 16 and 18 of Regulation XXIX of 1802, the Adawlut of the Zilla appears to be the Court thereby intended to deal with the punishment or dismissal of karnams. We are unable to attach weight to the observation of the Judge that "the old Madras Regulations are loosely drawn, and it is doubtful whether any expression used in those regulations was used designedly, and that the draftsman appears to have varied his phrases or to have used synonyms without intending to convey an altered meaning." Observations such as these are at variance with the rules of judicial interpretation, which must govern the construction of enactments so long as they are in force, however loosely they may have been drawn. The next enactments to which we may refer are Regulations I and VII of 1827, which constituted auxiliary Courts and Courts of Native Judges and invested them with the same power and authority within the limits assigned to their local jurisdiction, subject to the condition that they were not to try original suits of more than Rs. 5,000 in value, and subject also to

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"institute a suit in the Adalut of the Zila for the purpose of bringing such karnam "to trial and punishment; but where a zamindar may deprive a karnam of his "office without such previous regular process, the zamindar shall be liable to make "such satisfaction for the injury as the Adalut of the Zila may decree.

"Where a karnam may be dismissed from his office by the sentence of a Court "of Judicature, the zamindar shall in the first instance select a successor from the "family of the last incumbent, provided any member of that family be found capa-"ble of performing the duty of karnam; but where no member of the family may "be capable of discharging the duty of karnam, in that case the zamindar shall "exercise his discretion in the appointment of a proper person. The name of the "person appointed to succeed to the office of karnam shall be reported to the "Collector of the Zila by the zamindar."

certain other restrictions in the case of Native Judges, which it is not necessary to mention for our present purpose.

By Madras Act VII of 1843, Zillah Courts were established under the designation of Civil Courts, and they were authorized to exercise the same civil jurisdiction as was exercised by the Provincial Courts of Appeal, which were then abolished, except that they were directed not to try original suits of less than Rs. 10,000 in value. In every district in which a Court was constituted under Regulation I or VII of 1827, it was authorized to take the place of the old Zillah Court in regard to suits for an amount or value less than Rs. 10,000, and there was no restriction placed upon its jurisdiction or power to entertain special suits, such as those for the dismissal of karnams, which had until then been cognizable by the Court of Adawlut or the former Zillah Court. Neither the Civil Courts Act nor s. 11 of the Code of Civil Procedure introduced any change in this respect. The conclusion to which we come is that the Subordinate Court and the District Court, where there is no Subordinate Court, is the tribunal that has taken the place of the Court of Adawlut of 1802.

In *Ramakistnam* v. *Ragavachari*(1) it was held that under Regulations XXV and XXIX of 1802 the Adawlut of the Zillah (now District Court) in the district of Trichinopoly was the Court competent to fine a zamindari karnam for breach of duty. The power to dismiss and to fine rests on the same provision of law. In *Ponnusami* v. *Krishna*(2) it was held by the Full Bench of this Court that it was the Subordinate Court that was competent to exercise the special jurisdiction conferred on the old Zillah Courts by Regulation IV of 1816, s. 35, cl. 1. The decision in *Ramachandra* v. *Appayya*(3) is not in point, the question decided by it being that a shrotriemdar is not a zamindar or a proprietor within the meaning of Regulations XXV and XXIX of 1802. Nor is the case of *Venkayya* v. *Subbarayudu*(4) on all fours with this case, the object of that suit being a declaration that a particular appointment made by a proprietor was invalid. The case of *Chandramma* v. *Venkatraja*(5) was also a suit for a declaration that an appointment made by a zamindar was in excess of his

(1) I.L.R., 3 Mad., 405. (2) I.L.R., 5 Mad., 222.
(3) I.L.R., 7 Mad., 128. (4) I.L.R., 9 Mad., 283.
(5) I.L.R., 10 Mad., 226.

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authority. The course of decisions therefore does not support the opinion of the Judge.

We set aside his order and direct him to readmit the plaint and deal with it in accordance with law. The costs of this appeal will be costs in the cause.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

1889. Jan. 28. Feb. 6.

NAGAPPA (PLAINTIFF),

v.

ISMAIL (DEFENDANT).*

Limitation Act—Act XV of 1877, sch. II, art. 75—Bond payable by instalments—Default in payment of an instalment—Waiver of a condition of forfeiture on default in payment of one instalment—Acceptance of an instalment overdue.

A bond, payable by instalments, provided that if default was made in paying one instalment the whole debt should become due. The amount of the third instalment was paid five days after it became due. The Lower Court found that this payment was accepted by the obligee as a payment made on account or in satisfaction of the third instalment, and not as a mere part payment in reduction of the whole debt, and that the circumstances indicated an intention to waive the forfeiture though there was no express waiver:

Held, that the acceptance of the amount of the third instalment constituted a waiver within the meaning of art. 75, of sch. II, of the Limitation Act, 1877.

CASE stated for the decision of the High Court under s. 617 of the Code of Civil Procedure by V. Subramanyam, District Munsif of Penukonda, in small cause suit No. 122 of 1888.

The case stated is recited sufficiently for the purpose of this report in the judgment of the High Court.

The bond executed by the defendant to the plaintiff upon which the case arose ran as follows:—

"Bond dated 15th Makasudda of the year Vikrama, executed and given to Tadimari Mallappa, guardian of Namagundha Nagappa, by Gudhudi Fakir Saheb's son, Pedda Ismail Saheb, residing in Jadala.

"The whole of the interest up to date in the matter of former account and bonds being deducted, the sum due in the matter of

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* Referred Case No. 15 of 1888.