REFERENCE UNDER STAMP ACT, S. 46.

The Board agrees with the Collector and is prepared to remit the penalty of Rs. 5, but has no power to revise the Deputy Collector's decision so far as the stamp duty is concerned. The case is therefore referred for the orders of the High Court. After the decision of the High Court is received, the Board will proceed to dispose of the case conformably with that decision.

Counsel were not instructed.

JUDGMENT.—The reason for making an allowance for a spoiled stamp under section 51 is that the stamp has become unfit for use, but in this case the stamp was not rendered unfit for use by punching, for the Court itself engrossed upon the paper the deed for which the stamped paper was presented. We are of opinion that the Deputy Collector was in error in treating the document as unstamped.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Shephard, Mr. Justice Best, and Mr. Justice Subramanya Ayyar.

1895. March 22, 27.

RAJAM CHETTI (PLAINTIFF), APPELLANT,

v.

SESHAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

High Court powers of, to make rules as to Small Cause Court—24 and 25 Vict., cap. 104, *s.* 15—*Civil Procedure Code—Act XIV of* 1882, *s.* 652—*Presidency Small Cause Courts Act—Act XV of* 1882, *ss.* 6, 18, *cls.* (*a*) *and* (*c*), 33.

In 1885 the High Court made a rule under Presidency Small Cause Courts Act, section 33, whereby it was declared that the granting leave to sue a defendant out of the jurisdiction under section 18, clauses (*a*) and (*c*) of that Act, was a non-judicial or *quasi*-judicial act within the meaning of that section and might be done by the Registrar of the Court of Small Causes, Madras:

Held, that the rule was *ultra vires* and void.

CASE referred for the opinion of the High Court by R. B. Michell, Chief Judge of the Small Cause Court, Madras, under Civil Procedure Code, section 617, and Presidency Small Cause Courts Act, section 69.

Before the hearing of the case out of which this reference arose, the Chief Judge and the other Judges of the Small Cause Court had, in a similar case, delivered judgment as follows:—

* Referred Case No. 32 of 1894.

" This is an application to the full Court preferred under section 37 of the Presidency Small Cause Courts Act, 1882, against the order of the second Judge of this Court in suit No. 11239 of 1894, dismissing the suit on the ground that the Registrar, by whom, acting, as he understood that he had authority to act, under section 18, sub-section (*a*) of that Act, leave to institute the suit had been granted, had no legal power to grant such leave. By a rule passed by the High Court of Judicature of Madras, dated 23rd November 1885, and published in the *Fort St. George Gazette* of 2nd December 1885, the High Court declared that certain acts were non-judicial or *quasi*-judicial acts within the meaning of that section, which might be done by the Registrar of the Court of Small Causes, Madras.

Among the acts so declared to be non-judicial or *quasi*-judicial was the following :—

(1) Granting leave to sue defendant out of the jurisdiction under section 18, clauses (*a*) and (*c*) of the Presidency Small Cause Courts Act, 1882.

Mr. Robert Grant, who argued the case for the applicant (the plaintiff in the suit), conceded that under section 33 of the Presidency Small Cause Courts Act, 1882, under which the rule above-mentioned purported to be passed, the acts which the High Court was empowered to declare to be non-judicial or *quasi*-judicial acts within the meaning of that section were limited to acts provided for by the Code of Civil Procedure, as applied by the Presidency Small Cause Courts Act,1882, and did not include acts provided for by the Presidency Small Cause Courts Act, but he contended that, under section 652 of the Code of Civil Procedure and under section 15 of the 24th and 25th Vict., cap. 104, read with section 6 of the Presidency Small Cause Courts Act, 1882, the High Court had powers which comprehended, *inter alia*, a power to declare what acts should be deemed non-judicial or extra-judicial and exercisable by the Registrar of the Court of Small Causes of Madras. The learned counsel also referred to the rules of the High Court of Judicature, Madras, Original Side, 1891, published in the *Fort St. George Gazette* of 16th June 1891 by Appendix (i) whereto, relating to " non-judicial or *quasi*-judicial powers possessed by the Registrar, " the Registrar of the High Court on the Original Side has been empowered, except where he shall see fit to direct the matter to be laid before a Judge, to

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pass an order allowing a suit to be filed in the High Court—which appears to involve a power to grant leave to sue in the High Court in suits (not being suits for immovable property) where, though the defendant does not dwell or carry on business or personally work for gain within the local limits of the ordinary original jurisdiction of the High Court, the cause of action has arisen in part within those limits. And he contended that, inasmuch as it is under clause 12 of the Letters Patent, 1865, that the High Court, in its ordinary original jurisdiction (in suits other than suits for immovable property) has power to grant leave to sue defendants in such cases and not under section 17 of the Code (Act XIV of 1882), which does not apply to the High Court on its Original Side, and inasmuch as section 637 of the Code like section 33 of the Small Cause Courts Act, does not extend to non-judicial or *quasi*-judicial acts other than those provided for by the Code, it could not have been by virtue of section 637 of the Code, but must have been by virtue of section 652 of the Code or by virtue of section 15 of 24 and 25 Vict., cap. 104, or by virtue of some other (if any) law empowering it in that behalf, that the High Court declared that such granting of leave to sue was a non-judicial or *quasi*-judicial act which the Registrar of that Court should have power to perform; and that if the High Court could thus under one or other or all of those laws, other than section 637 of the Code make such a declaration, it had also the power, under one or other or all of those same laws and section 6 of the Presidency Small Cause Courts Act, 1882, and independently of section 33 of that Act, to make a similar declaration with reference to the Registrar of the Court of Small Causes of Madras. So far as this argument relates to section 652 of the Code, it is to be observed that at the time when the rule of the High Court of 23rd November 1885 under consideration was passed, section 652 did not extend to the Presidency Small Cause Courts, and it was not until the amending Act X of 1888 was passed that that section 652 was extended to those Courts. As section 652 relates only to action to be taken by a High Court, the exclusion of that section from the original second schedule to the Presidency Small Cause Courts Act, 1882, must, we think, be taken to have meant that the High Court could not take such action in respect to the Presidency Courts of Small Causes. There still remain, however, the powers under section 15 of the Statute 24 and 25 Vict., cap. 104. But,

assuming, for the sake of argument, that the High Court had power, if not under section 652 of the Code, yet under section 15 of the 24 and 25 Vict., cap. 104, or under some other law thereunto enabling it, to pass a rule or order declaring the granting of leave to sue defendants out of the jurisdiction under section 18, clauses (*a*) and (*c*) of the Presidency Small Cause Courts Act, 1882, to be a non-judicial or *quasi*-judicial act performable by the Registrar of this Court, it appears to us that we are precluded by the terms of the rule of the High Court now under consideration, from holding that the High Court did in fact make the declaration in question as to such granting of leave under any other law than section 33 of the Presidency Small Cause Courts Act, 1882. That rule is as follows :—"Under section 33 of the Presidency Small Cause Courts "Act, 1882, the High Court declares the following to be non-judicial "or *quasi*-judicial acts within the meaning of that section which "may be done by the Registrar of the Court of Small Causes, "Madras" :—then follow the acts so declared non-judicial or *quasi*-judicial acts of which the one now in question is the first-mentioned. On the other hand, the order of the High Court (in the rules above referred to passed and published in 1891) passing the rule empowering the Registrar of the High Court on the Original Side to pass an order allowing a suit to be filed in the High Court, is expressed to be made "under sections 637 and 652 of the Code of "Civil Procedure (Act XIV of 1882) and all other powers thereunto "enabling." From the fact that, on that occasion, in addition to section 637, section 652 and all other powers thereunto enabling, are mentioned, in declaring under what authority the rule was made, we think that we ought, upon sound principles of construction, to conclude that if the rule now in question (under which the High Court declared the granting of leave to sue under section 18 of the Presidency Small Cause Courts Act, 1882, sub-sections (*a*) and (*c*), to be a non-judicial or *quasi*-judicial act, performable by the Registrar of that Court) was intended to be passed, and was passed, not under section 33 of the Presidency Small Cause Courts Act, 1882, but under section 652 of the Code or under any other power thereunto enabling, the High Court would, in declaring under what authority this rule was passed, have mentioned in addition to section 33 of the Presidency Small Cause Courts Act, 1882, section 652 of the Code, and all other powers thereunto enabling, and that, not having done so, the High Court intended

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to pass, and did pass, this rule, only and solely as under section 33 of the Presidency Small Cause Courts Act, 1882.

In one of the three other and similar applications, Nos. 48 of 1894, 56 of 1894, 55 of 1894, which were heard together with this application (viz., application No. 55 of 1894 against the decree of the third Judge in suit No. 20930 of 1893, dismissing the suit on the ground that the Registrar had no power to grant leave to sue), it was contended by Mr. Venkatramayya Chetti who appeared for the applicant, that if there was any law under which the portion of the rule of High Court of 23rd November 1885 now under consideration was valid, it ought to be upheld as valid, notwithstanding that it purported to be passed under section 33 of the Presidency Small Cause Courts Act, 1882, and no other law was mentioned in it as authority under which it was passed; and that from the fact that the Registrar has been, ever since that rule came into operation, exercising the power of granting leave to sue in the suits in question, it should be presumed, unless and until the contrary is shown, that he has been duly and legally empowered to do so, and he relied upon the case of *Queen-Empress* v. *Ganga Ram*(1). In that case, the appointment by the Lieutenant-Governor of the North-West Provinces of Mr. W. K. Burkitt to officiate as fifth puisne Judge of the High Court, North-West Provinces, which purported to be made in virtue of the authority vested in the Lieutenant-Governor by sections 7 and 16 of 24 and 25 Vict., cap. 104, was held by a Full Bench of that Court to be *ultra vires* of the Lieutenant-Governor and illegal, if it depended for its validity upon sections 7 and 16 of the 24 and 25 Vict., cap. 104. But having regard to the fact of the notifications published in the Government Gazette, North-West Provinces and Oudh, relating to Mr. Justice Burkitt's appointment, to the fact that apparently the Secretary of State for India in Council sanctioned the appointment of a fifth puisne Judge as a temporary appointment, and to the fact that he had in fact since his first appointment in November 1892 acted in all respects as a Judge of the High Court, which "last fact is accord-"ing to a well-known principle of the law of evidence, presump-"tive proof, until the contrary be shown, of his due appointment to "act a Judge of this Court," the Full Bench held, that, being in

(1) I.L.R., 16 All., 136.

ignorance as to whether or not any power existed under which Mr. Justice Burkitt might have been lawfully appointed to act as a Judge of the Court, the presumption that he was duly appointed, which arose from the fact of his having acted as a Judge of the Court since November 1892, had not been rebutted. Whatever justification there may have been in that case for the presumption "*omnia rite et solemniter esse acta*" being acted upon in the manner in which it was; we are of opinion that we ought not in the present case to presume from the fact that the Registrar has *de facto* been exercising the power now under consideration for many years, that he was legally invested with such power, notwithstanding that the rule of the 23rd November 1885 so far as it purported to make the power one exercisable by him was, in our opinion, *ultra vires*.

We regret that we have felt ourselves compelled to come to the conclusion at which we have arrived upon the point in question; there are a considerable number of suits pending, which are affected by the decision of the point.

We were asked by the vakil for the applicant in application No. 55 of 1894 to refer the question to the High Court for its opinion under section 69, Presidency Small Cause Courts Act, 1882, but much though we should have preferred that this question should have been brought before the High Court for decision, we have no power to refer it under section 69 of the Act. (See *Oakshott* v. *The British India Steam Navigation Company*(1)). Nor have we any power to make a reference of the question under section 617 of the Code, as there is no suit, nor appeal, nor proceeding in execution of a final decree, now before the Court. The Chief Judge asked the vakil why he had not taken the case before the High Court under section 622 of the Code, instead of coming to this Court under section 37 of the Act and then applying under section 69, and he replied that he had considered the latter the preferable course.

We must, with regret, dismiss this application."

In the present case the same objection was taken by the defendant and the Chief Judge referring to the above judgment dismissed the suit, making his decree contingent on the opinion of the High Court upon the following question:—

(1) I.L.R., 15 Mad., 179.

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Was the Registrar of this Court legally empowered to give leave to institute this suit in this Court and such leave having been granted by him has this Court jurisdiction to try this suit?

Mr. R. F. Grant for the plaintiff argued that the rule empowering the Registrar to grant leave was a valid rule; that it was competent to the Court to make such a rule and that the power was none the less effectually exercised, because a wrong section was quoted. He referred to *Queen-Empress* v. *Ganga Ram*(1).

Sivagnana Mudaliar for defendants.

The further arguments adduced in the case appear sufficiently for the purpose of this report from the judgments.

COLLINS, C. J.—This is a case stated for the opinion of the High Court under section 69 of the Presidency Small Cause Courts Act, 1882, by the Chief Judge of that Court.

On the 23rd November 1885, the High Court declared under section 33 of the Presidency Small Cause Courts Act XV of 1882, that the granting leave to sue a defendant out of the jurisdiction under section 18, clauses (*a*) and (*c*) of the Presidency Small Cause Courts Act, 1882, was a non-judicial or *quasi*-judicial act within the meaning of that section which might be done by the Registrar of the Court of Small Causes, Madras.

The question the High Court has now to decide is—Had the High Court power to make such a rule or is the rule *ultra vires*.

The 33rd section of the Presidency Small Cause Courts Act, 1882, enacts that "any non-judicial or *quasi*-judicial act which the "Code of Civil Procedure as applied by this Act requires to be done "by a Judge . . . . . may be done by the Registrar of "the Small Cause Court or by such other officer of that Court as "that Court may from time to time appoint in this behalf. The "High Court may from time to time by rule declare what shall "be deemed to be non-judicial and *quasi*-judicial acts within the "meaning of this section."

Chapter 2 of the Civil Procedure Code, in sections 15 to 19, regulates the place of suing, and those sections are not applied to the Small Cause Court by Act XV of 1882 and the reason is obvious, as, by the 18th section of Act XV of 1882, the Small Cause Court has jurisdiction to try suits of a civil nature, where the cause of action has arisen either wholly or in part within the

(1) I.L.R., 16 All., 136.

local limits of the jurisdiction of the Small Cause Court, or if any of the defendants at the time of the institution of the suit actually and voluntarily resides or carries on business or personally works for gain within such local limits provided the leave of the Court has been given or the defendants acquiesce in such institution.

Section 6 of Act XV of 1882 enacts that the Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court and the High Court shall have in respect of it the same powers as it has under 24 and 25 Vict., cap. 104, section 15. That Act gives power to the High Court to make and issue general rules for regulating the practice and proceedings of such Courts, provided that such rules be not inconsistent with the provisions of any law. Section 652 of the Code of Civil Procedure gives the High Court power to make rules consistent with the Code to regulate any matter connected with the procedure of Civil Courts subject to its superintendence. It is argued by Counsel for the plaintiff that either under 24 and 25 Vict., cap. 104 or section 652, Code of Civil Procedure, the High Court had power to make the rule in question. It would be enough to say that the rule does not purport to be made under the Act or under section 652, but under the powers conferred by section 33 of Act XV of 1882—but I am of opinion that neither under the Act nor under section 652 has the High Court the power contended for.

Under section 18 of Act XV of 1882, it is enacted that the leave of the Court must be given—the High Court by the rule has set aside that provision of law and has said that the leave of the Registrar is sufficient; it is impossible to say that a Registrar is a Court for such a purpose as this—the duties and powers of a Registrar are strictly defined and limited. It is also impossible in my opinion to say that granting leave to sue a defendant out of the jurisdiction under section 18, clauses (*a*) and (*b*) was a non-judicial or *quasi*-judicial act which the Code of Civil Procedure as applied by that act requires to be done by a Judge.

For these reasons, therefore, I hold that the Registrar's order granting leave to sue is not a valid leave within the meaning of section 18 of Act XV of 1882 and that the rule of the High Court of the 23rd November 1885 is *ultra vires*.

SHEPHARD, J.—The question raised by this reference is whether leave given by the Registrar in cases in which the leave of the Court is required by the 18th section of Act XV of 1882 is

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a valid and lawful leave within the meaning of that section. In 1885, a rule was passed by the High Court purporting to declare under the 33rd section of the Act certain acts to be non-judicial or *quasi*-judicial. Among such acts is that of "granting leave to "sue defendant out of the jurisdiction under section 18, clauses (*a*) "and (*c*) of the Act." If the particular act of granting leave had been one which the Code of Civil Procedure as adopted by the Presidency Small Cause Courts Act required to be done by a Judge, then there is no doubt that such act being declared by the High Court to be a *quasi*-judicial act might be done by the Registrar of the Small Cause Court. But the section of the Code requiring leave to be given before institution of a suit is not one of the sections made applicable to the Presidency Small Cause Court by the 23rd section of the Act. It was unnecessary to make it applicable, because the matter is provided for in the 18th section of the Act itself.

The 33rd section makes no reference to matters regulated by the Act itself and therefore any declaration or rule made under it cannot affect the provisions of the 18th section. The rule of the High Court must be *ultra vires*, unless justification for it can be found in some other enactment. The power to make rules for regulating the procedure of Courts subject to the appellate jurisdiction or under the superintendence of the High Court is vested in the High Court by the Statute 24 and 25 Vict., cap. 104, section 15, and also by the 652nd section of the Civil Procedure Code. By the 6th section of the Presidency Small Cause Courts Act, the Small Cause Court is declared to be a Court subject to the superintendence of the High Court within the meaning of the Civil Procedure Code. It is further declared that the High Court may exercise in respect of the Small Cause Court the same powers as it has under the 15th section of the Statute in respect of Courts subject to its appellate jurisdiction. Either under this section of the Statute or under the 652nd section of the Code the High Court has power to make rules regulating the procedure of the Small Cause Court. I do not agree with the opinion which has been expressed that the exclusion of the 652nd section from the second schedule annexed to the Act XV of 1882 shows that it was not intended that the powers of the High Court under that section should be exercised in respect of the Presidency Small Cause Courts. That opinion, as it appears to me, ignores the plain

words of the 6th section of the Act which make the latter Court subordinate to the High Court within the meaning of the Civil Procedure Code. It has to be seen whether this particular rule of November 1885 is a rule which it was competent to the High Court to pass under either of the above enactments, either under the Statute or under the Code. The power given in the former enactment is "to make and issue general rules for regulating the practice and proceedings of such Courts;" in the latter enactment "to make rules consistent with the Code to regulate "any matter connected with the procedure of the Courts subject "to its superintendence." Now it is a recognized principle of law that the rules made in pursuance of a delegated authority to that effect must be consistent with the Statute under which they came to be made. The authority is given to the end that the provisions of the Statute may be the better carried into effect, and not with the view of neutralizing or contradicting those provisions. The case of *Wetherfield* v. *Nelson*(1) illustrates the manner in which the principle is applied. In the present case, there is a distinct provision of the Act requiring in certain cases that leave of the Court shall be given before the institution of a suit. Under clause (*a*) of the 18th section "the leave of the Court for reasons recorded in writing" has to be given. The effect of the rule is to dispense with the leave of the Court and substitute the leave of the Registrar. In my opinion, the rule is manifestly inconsistent with the section. It is a rule which has the effect of neutralizing the section, not of carrying it into effect. It is impossible to say that the Court and the Registrar are one and the same person.

Any doubt which might otherwise exist seems to me to be removed by a consideration of the 33rd section. That section and the similar section in chapter XLVIII of the Code of Civil Procedure would be superfluous if the matter provided for in these sections were one with which the High Court could deal under its general powers of making rules. It is precisely because it was desired to give the High Court a dispensing power, a power to delegate to the Registrar acts which according to the law needed to be done by the Court, that the special section 637 was required. It may be by oversight that the 33rd section was not extended

(1) L.R., 4 C.P., 571.

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to Acts regulated by the Act itself; but as the section stands it appears to me strongly to indicate that in cases not within the scope of the section the High Court has no power to make such rules as under the section it may make.

For these reasons, I have come to the conclusion that the rule is *ultra vires*, and I must therefore hold that the leave given by the Registrar is not a valid leave within the meaning of the 18th section of the Act.

BEST, J.—I concur.

SUBRAMANYA AYYAR, J.—The question for determination is whether under section 33 of Act XV of 1882, or section 652 of the Code of Civil Procedure or the Statute 24 and 25 Vict., cap. 104, section 15, it was competent to the High Court to declare that the power which a Judge of the Court of Small Causes has under clauses (*a*) and (*c*) of section 18 of Act XV of 1882 to grant leave to sue a defendant out of the jurisdiction is one which the Registrar also of the Small Cause Court may exercise.

I am of opinion that the High Court had no authority to make such a declaration under any of the said provisions of law.

Now, it is quite clear that the first of these provisions, viz., section 33, has no application to the present case. For that section only provides, (i) that the Registrar of the Small Cause Court may do any non-judicial or *quasi*-judicial act which the Court itself is empowered to do under any of the sections of the Civil Procedure Code extended to the Small Cause Court by Act XV of 1882; (ii) that the High Court may by rule declare what shall be deemed to be non-judicial and *quasi*-judicial acts within the meaning of the section 33. The portions of the Civil Procedure Code extended by Act XV of 1882 to the Presidency Small Cause Courts are specified in the second schedule of the Act. But none of these portions relate to the granting of leave to sue defendants out of the jurisdiction. It follows, therefore, that under section 33 the Registrar has no power to grant leave to sue a defendant out of the jurisdiction, and consequently the High Court has no authority to make the declaration under the latter part of the said section. Whether the omission to include the power to grant leave to the defendant out of the jurisdiction among those powers which the Registrar may exercise under section 33 was due to a mere oversight on the part of the legislature or not, it is unnecessary to consider. It is sufficient to say that as section 33 stands the High

Court is not empowered under it to make the declaration in question.

It is next contended that since section 6 of Act XV of 1882 makes the Presidency Small Cause Courts subject to the superintendence of the High Court within the meaning of section 652 of the Civil Procedure Code, and the Statute 24 and 25 Vict., cap. 104, section 15, the declaration in question is valid. No doubt under the former, viz., section 652, the High Court may, from time to time, make rules consistent with the Code to "regulate any matter connected with the procedure" of the Courts of Civil Judicature subject to its superintendence: and under the latter, viz., the Statute 24 and 25 Vict., cap. 104, section 15, the High Court "may make and issue general rules for regulating the practice and proceedings" of such Courts. But in my opinion, the High Court is not entitled under either of the last mentioned sections to make a declaration by rule on the matter of granting leave to sue defendants out of the jurisdiction. I arrive at this conclusion notwithstanding the wide construction put upon the words "practice" and "procedure" by the Court of Appeal in *Poyser* v. *Minors*(1), where Lush, L. J., explains that those words in their larger sense denote "the mode of proceeding "by which a legal right is enforced, as distinguished from the law "which gives or defines the right, and which by means of the pro- "ceeding the Court is to administer the machinery as distinguished "from its product." It seems to me that the declaration made by the High Court is altogether outside the scope of the regulation of "practice" and "procedure" contemplated by section 652 of the Code of Civil Procedure and the Statute 24 and 25 Vict., cap. 104, section 15. The declaration is in my view a clear delegation of what is undoubtedly judicial power, exercisable by the Court itself, to the Registrar who is not constituted a Judge as to the matter of granting leave under clauses (*a*) and (*c*), section 18 of Act XV of 1882, while he is in regard to some others (see section 14 of the Act). Such a delegation of judicial authority, I should think, cannot take place except under express and specific statutory provisions such as are contained in section 33 of Act XV of 1882. But, as has been already shown, that section does not cover the case under consideration.

(1) L.R., 7 Q.B.D., 329, 333.

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For the reasons stated above I hold that the declaration made by the High Court in 1885 that granting leave to sue a defendant out of the jurisdiction under clauses (*a*) and (*c*) of section 18 of the Presidency Small Cause Courts Act, 1882, is one of the acts which may be done by the Registrar of the Small Cause Court under section 33 of the Act is *ultra vires*, and the leave given by the Registrar in the case under reference is not a valid leave within the meaning of the said Act.

APPELLATE CIVIL.

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

RAMA REDDI (PLAINTIFF No. 1), APPELLANT,

v.

APPAJI REDDI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1894. August 10, 28.

Interest Act—Act XXXII of 1839—*Transfer of Property Act—Act IV of* 1882, *s.* 88—*Mortgage—Interest* 'post diem.'

The plaintiff sued in December 1891 upon a registered mortgage dated 1875, in which it was provided that interest should be paid at the rate therein mentioned, and that the principal should be repaid on 10th April 1880, but in which there was no provision for payment of interest *post diem*:

Held, that interest *post diem* should be awarded under the Interest Act, 1839, at a reasonable rate:

Semble: the amount so awarded would constitute a charge on the mortgage premises.

SECOND APPEAL against the decree of W. F. Grahame, District Judge of South Arcot, in appeal suit No. 36 of 1893, affirming the decree of P. S. Gurumurti, District Munsif of Cuddalore, in original suit No. 1 of 1892.

Suit instituted on 18th December 1891 to recover principal and interest due on a mortgage, dated 19th June 1875. The principal sum was repayable under the terms of the instrument on 10th April 1880. With reference to the plaintiff's claim for interest, and also to a plea of limitation raised by the defendant, the Dis-

* Second Appeal No. 1546 of 1893.