

by the District Judge, inasmuch as the right of the second defendant, established by the suit under Regulation '6 of 1831, was never subsequently set aside or even disowned by the revenue authorities. The appointment of the plaintiff as sole nattangar in April 1891 was never intended to affect the right of the second defendant to the moiety of the lands. It was merely an act of policy on the part of the Government for the more convenient discharge of the duties of the office and could only affect the right of the second defendant from the date of such appointment. We do not think it would be reasonable, nor is there any authority for holding that the plaintiff's appointment in April 1891 should have effect retrospectively so as to divest the second defendant of the right which had vested in him by the prior order to enfranchise half the lands in his name. We must therefore reverse the decree of the District Judge and restore that of the District Munsif. First respondent must pay appellant's costs in this and in the Lower Appellate Court.

SANKARA
SUBBAYAR
v.
RAMASAMI
AYYANGAR.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

MUTHAYYA.*

1897.
July 22.

*Criminal Procedure Code—Act X of 1882, s. 83—Breach of Contract Act—
Act XIII of 1859—Warrant.*

Criminal Procedure Code, section 83, is applicable to warrants issued under Breach of Contract Act, 1859, and they can be executed outside the jurisdiction of the Court which issued them.

CASE referred for the orders of the High Court by K. U. Manavedan Raja, Acting District Magistrate of Anantapur, under Criminal Procedure Code, section 438.

The case was stated as follows:—

“In this case the District Magistrate of Coorg issued a warrant for the arrest of one Muthayiga, a resident of Nasanakota

* Criminal Revision Case No. 74 of 1897.

QUEEN-
EMPRESS
v.
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“village of Dharmavaram taluk in this district, on the ground
“that he had received an advance of money amounting to Rs. 30
“from a recruiter of labour named Homna Maistry under an
“agreement to work in the Habri Coffee Estate from 25th
“March 1896 to 25th March 1897 at the rate of wages usually
“paid or prevalent at that place, and had failed to carry out the
“terms of the contract. The warrant directed that he should
“be produced before the District Magistrate unless he can give
“bail himself in the sum of Rs. 30 with a surety in the sum of
“Rs. 60 to appear before him on 21st December 1896. The
“man applied to the Head Assistant Magistrate to be allowed
“time to produce bail and was remanded for a day pending its
“production and then released.

“It is doubtful whether the provisions of the Criminal Procedure Code, 1882, relating to warrants apply to warrants issued under Act XIII of 1859, and whether a warrant under the Act can be executed at all outside the jurisdiction of the Court which issues it. On the one hand the words of section 83 of the Code are unqualified and so far appear to apply to all warrants. On the other hand they may be restricted to warrants ‘issued under the Code’ by virtue of sections 75 and 93, which seem to apply to the whole chapter. It is to be noted that though a warrant may issue under section 1 of Act XIII of 1859, no ‘offence’ has been committed until the Magistrate has made an order and that order has been disobeyed; and it appears very hard that the special procedure provided by that Act which applies in certain cases penal provisions to the breach of a civil contract should be capable of being employed to drag labourers many hundred miles from their homes to answer a charge of such breach. I request, therefore, that it may be decided by an authoritative ruling whether the existing law permits of such procedure. I beg further to add that the warrant in the case under report purports to have been issued under section 75, Criminal Procedure Code.”

The Public Prosecutor (Mr. Powell) for the Crown.

ORDER.—We are clearly of opinion that section 83 of the Criminal Procedure Code is applicable to warrants issued under the provisions of the Act XIII of 1859. There are no words in that section limiting the operation of it to warrants issued under the Code. The reference to warrants issued under the Code made

in sections 75 and 93 cannot, we think, be taken to have the effect suggested. It cannot be supposed that, if when the Codes of 1861 and 1872 were in force, the sections in them corresponding to section 83 of the present Code were applicable to warrants issued under Act XIII of 1859, that state of the law was intended to be altered in the Code of 1882. To hold that none of the provisions of chapter VI of the Code apply to such warrants would lead to the conclusion that there is no provision made for the issuing or executing of them. It is not necessary to say whether, under the Act of 1859, breach of contract is constituted an offence. The language of the Act appears to us to indicate that such was the intention of Legislature, but at any rate the Act authorizes the Magistrates, on a complaint being made, to issue a warrant, and the only question is whether the provisions of the Criminal Procedure Code apply to that warrant. We think that the provision in question does apply.

QUEEN-
EMPRESS
v.
MUTHAYYA.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

PARVATHI AMMAL (PLAINTIFF), APPELLANT,

v.

SUNDARA MUDALI (DEFENDANT), RESPONDENT.*

1897.
July 23.

*Hindu Law--Partition of land between widow and mother of the last male owner--
Widow's right on death of mother.*

The widow and mother of a land-owner, who died without issue, divided his land between them in 1869. The mother sold her share of the land in 1870, and died in 1890. The widow now sued in 1893 to recover the property from the vendee :

Held, that the suit was not barred by limitation and the plaintiff was entitled to recover.

SECOND APPEAL against the decree of S. Russell, District Judge of Chingleput, in Appeal Suit No. 272 of 1894, reversing the decree of P. S. Gurusurthi Ayyar, District Munsif of Poonamallee, in Original Suit No. 426 of 1893.

* Second Appeal No. 689 of 1896.