JUDGMENT.—There is nothing in the document to indicate that the parties did not intend that interest should be paid after the expiration of the eight years, within which the principal was to be repaid, and we must, therefore, hold, having regard to the ordinary expectations of parties who enter into transactions of this kind, that it was the intention of the parties in this case that interest should continue to be paid until the liquidation of the debt. This is in accordance, with the principles laid down in the recent Privy Council Case *Mathura Das* v. *Raja Narindar Bahadur Pal*(1) which is now the authoritative guide on the question of *post diem* interest.

We must allow the appeal with costs in both Courts and modify the decree by allowing interest at the rate of 18 per cent. from the date of default up to 16th April 1888, and thereafter at 9 per cent. per annum up to the date of the Lower Court's decree, and further interest on the whole amount at the rate of 6 per cent. till payment. Credit should be given for the amount paid towards interest by the defendants as found by the District Judge. There will be the usual order for sale in default of payment within six months from this date.

APPELLATE CIVIL.

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

SANKARAN NARAYANAN (DEFENDANT No. 11), APPELLANT,

v.

ANANTHANARAYANAYYAN AND OTHERS (PLAINTIFFS AND DEFENDANTS NOS. 1 TO 9), RESPONDENTS.*

1892. December 23.

Civil Procedure Code—Act XIV of 1882, *s.* 32—*Joinder of parties—Change in character of suit.*

In an ejectment suit by a landlord against his tenant, the Court should not bring on to the record the person from whom the plaintiff holds the land, nor persons claiming to hold it from a third party, nor such third party.

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(1) L.R., 23 I.A., 138.

* Second Appeal No. 1737 of 1891.

In Second Appeals Nos. 658 and 1403 of 1895 preferred against the decree of the Subordinate Judge of Calicut in Appeal Suit No. 417 of 1893 judgment was delivered by DAVIES and BODDAM, JJ., which was as follows :—

SANKARAN NARAYANAN v. ANANTHA-NARAYAN-AYYAN.

SECOND APPEAL against the decree of V. P. DeRozario, Subordinate Judge of South Malabar, in Appeal Suit No. 1052 of 1890, affirming the decree of V. Ramasastri, District Munsif of Palghat, in Original Suit No. 419 of 1888.

Plaintiff sued to recover possession of certain land with arrears of rent on the defendants removing the improvements effected by them.

The District Munsif passed a decree as prayed, which was affirmed on appeal by the Subordinate Judge.

Paragraph No. 18 of the District Munsif's judgment referred to by Wilkinosn, J., was as follows:—

"In the first written statement the defendants Nos. 2 to 6 and 9 "set up their own right over the plaint property. But in the second "petition put in by them, they stated holding under the eleventh "defendant's family, but without specifying on what right they "held under him. Plaintiffs' twenty-eighth witness, who is the first "defendant in the cognate suit No. 425 of 1888, admits that, after "consulting with the eleventh defendant, he put in a similar peti- "tion in that suit relinquishing his own right and setting up "holding under the eleventh defendant without specifying the "nature of the right (*vide* M. P. No. 3177 of 1888). This fact "shows that at the time that petition was put in, that defendant "and the eleventh defendant had not made up their minds as to the "nature of the right which the former was to set up. Exhibits A-90 "and A-91 are decree and judgment in a suit similar to the present "one brought to recover a Kudiyirup included in the Saswathom "deed. Vella, the second defendant, in that suit is the demisee "under exhibit 16. But he set up his own right and made no "mention whatever of holding on Janom under the eleventh de- "fendant. These facts are strong enough to disprove the genuine- "ness of exhibits 15 and 16. Exhibit 8, the alleged Marupattam "of 1014, relates to a house different from those of these two suits. "Velu Nair, plaintiffs' seventeenth witness, the alleged demisee "under exhibit 8, disowns the kanom and claims the property as "his own jenm. The lands forming the eastern and northern

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JUDGMENT.—These second appeals are only on questions of fact, and must, therefore, be dismissed with costs

This case is another illustration of the objectionable practice in Malabar condemned by Mr. Justice Wilkinson in his judgment, with which we thoroughly agree in Second Appeal No. 1737 of 1891. In order that the practice may be put a stop to, that judgment will be reported.

"boundary in exhibit 8 are described to be the eleventh defendant's "jenm. But plaintiffs' twenty-sixth witness' vakil Sankunni "Nair claims them as his own."

The further facts of the case appear sufficiently for the purposes of this report from the judgment of Mr. Justice Wilkinson.

Sundara Ayyar for appellant.

Pattabhirama Ayyar for respondents.

WILKINSON, J.—I reserved judgment in this case not on account of any point of law which required further consideration, for upon the facts found the second appeal must fail; but because the case seemed to me at the hearing to be a typical instance of a class of cases which are too common in Malabar in which an ordinary suit between landlord and tenant valued at a few rupees, is allowed to be converted into a suit in which the title to extensive properties is determined. On further examination I find that the present is a remarkable case of that nature. The value of the suit was Rs. 20 and the stamp duty paid Rs. 1-8-0. The first plaintiff instituted the suit in 1888 to recover, with arrears of rent from 1882, a paramba leased by first plaintiff's deceased brother in February 1874 under a registered Pattam chit to the first and eighth defendants. These, viz., first plaintiff and first and eighth defendants were the only necessary parties to the suit, but for some reason or other the sons and grandsons of defendants Nos. 1 8 and were also made parties with the usual result. The lessees did not appear, but their sons and grandsons did, and they denied the letting and plaintiff's right to the paramba, and claimed the property as their own. It appears, however (*vide* paragraph 18 of Munsiff's judgment), that subsequently these defendants were got at by the eleventh defendant, and at his instigation they put in a petition stating that they held under him, but carefully omitted to specify under what right they held. The first plantiff proved the letting sued upon, and the District Munsiff granted him a decree. The Appellate Court, however, remanded the suit with directions to make the jenmi under whom plaintiff held on Saswathom tenure and the jenmi set up by the lessees' sons and grandsons, parties and to try the question of title. This was done, and, after a protracted litigation, the plaintiff's title has been declared. I cannot imagine a more monstrous case. A question of title to property of very considerable value has been decided in a suit by a lessor against a lessee under a registered deed, the execution of

SANKARAN NARAYANAN v. ANANTHA-NARAYAN-AYYAN.

which was not denied by the lessees, and which was proved beyond all doubt by the lessor. The sons and grandsons of the lessees were improperly made parties in the first instance, and still more improperly, were allowed to change their defence in the course of the suit, and to set up a person who is now shown to have no sort of right, and whose lease-deed is found to be a forgery. The suit is one of 1888. It has occupied the time and attention of three Courts and has been pending for four years. The eleventh defendant has been allowed to obtain a decision as to his title at a cost of eight annas or so, and the stamp revenue has been ruthlessly defrauded. The case ought not to have been converted from a suit of one character into a suit of an entirely different character. The sons and grandsons and their spurious landlord should have been referred to a separate suit for a decision of the question of title. It is nothing less than a scandal that cases should be tried in the manner in which this has been.

Both Courts have found that the lease sued on was granted, that the land is held under it, that second plaintiff under whom first plaintiff holds on Saswathom right is the jenmi, and that the Marupattam on which appellant relies is a recent fabrication. There are no grounds for this second appeal, which is dismissed with costs.

MUTTUSAMI AYYAR, J.—I am also of opinion that upon the facts found, the decision of the Judge is right, and that there are no grounds for interference in second appeal.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Boddam.

1896. November 2, 12.

PARAMANANDA DAS AND ANOTHER (COUNTER-PETITIONERS), APPELLANTS.

v.

MAHABEER DOSSJI (PETITIONER), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, ss. 244, 257 (a)—Representative of judgment-debtor—Agreement for satisfaction of judgment-debt.

A money decree was passed against a zamindar by the High Court in 1883, and it was transferred to the District Court for execution. The decree-holder

* Appeal against Order No. 33 of 1896.