appellant's position only more onerous. For it is clear that the party relying on the practice should show before an assignee for value is held affected by the practice, not only that it originally entered into and formed a part of the contract, but also that the assignee, and if there have been more assignments for value than one, every prior assignee was, before he took the assignment, aware of that fact. To hold otherwise would, it is obvious, often result in injustice to assignees for value, who are certainly liable to be misled as to the nature and extent of their obligations under grants or contracts assigned to them, the written instruments evidencing which (like exhibit I in the present case) contain no reference to the practice relied on and the incidents said to be annexed thereby. Such being the rule applicable to the appellant's case, as presented in this Court, we must hold that the appeal fails, since it is not even alleged by the appellant that the respondent had knowledge that the practice formed part of the contract. It is therefore unnecessary to enter into the other questions as to the existence of the practice and as to its forming part of the contract.

The second appeal is dismissed with costs.

APPELLATE CIVIL.

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

SANGILI VEERA PANDIA CHINNA TAMBIAR AND ANOTHER (PLAINTIFFS), APPELLANTS,

1897. July 5, 6, 9.

v.

SUNDARAM AYYAR AND OTHERS (DEFENDANTS NOS. 1 to 3), RESPONDENTS.*

Madras Forest Act, ss. 10 and 11—Claim to uninterrupted flow of natural stream—Jurisdiction of Forest Settlement officer.

A Forest Settlement officer appointed under section 4 of the Madras Forest Act, 1882, has, under sections 10 and 11 of that Act, jurisdiction to decide a claim by a riparian owner to the uninterrupted flow of the water of a natural stream.

APPEAL against the decree of S. Gopalachariar, Subordinate Judge of Tinnevelly, in Original Suit No. 40 of 1893.

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* Appeal No. 191 of 1895.

SANGILI VEERA PANDIA CHINNA TAMBIAR v. SUNDARAM AYYAR.

The plaintiff, the Zamindar of Sivagiri, brought this suit to establish his right to the uninterrupted flow of a natural stream called Kattar or Pedukulam. This stream flowed through Government land for some distance, and then, after flowing through the plaintiff's zamindari, emptied itself in a tank in one of plaintiff's villages.

The plaintiff complained that at a certain point in the course of the stream the defendants had recently cut a new channel which had the effect of diverting some of the water to a tank situated on Government land; and he claimed that he was entitled to an uninterrupted flow of the stream. The defendants denied the plaintiff's right to an exclusive use of the water and asserted that at the spot where the plaintiff alleged the cutting of a new channel a stream had, since the time of the ayacut, branched off to feed the tank on Government land.

The defendants also relied on a decision of the Forest Settlement officer as constituting a bar to the present suit under Madras Act V of 1882. In 1886 a preliminary notification was issued under section 4 of that Act, declaring that it was proposed to constitute a reserve forest. A part of the river in question, including the point at which the plaintiff alleged that a new channel had been cut, lay within the boundaries of the forest proposed to be reserved. In response to an invitation under section 6 of the Act by the Forest Settlement officer, plaintiff presented a claim through his agent. The nature of the claim was stated in Exhibit XI:—

"Claimant's agent states that the claim relative to the feeders "of Pedukulam is that the stream sweeping the base of Moonji "Malai on either side should be allowed to be repaired by the "claimant, that the repairs he refers to are the removal of stones, "sand, trees and rubbish, and that Kottayur Karnam Padagalin- "gam Pillai, Muthusami Muppan and Sundara Teven should be "examined on his behalf."

"The District Forest officer admits the claimant's right to the "water that flows naturally by the two natural streams into his tank "without prejudice to the water that flows naturally into other "channels that branch from the two natural streams in question.

"The claim to the natural flow of water into the tank is "admitted by the District Forest officer. Claimant has produced "evidence to show that the streams feed no other irrigation work

"than the claimant's Pedukulam tank. This is disproved by "evidence offered by the District Forest officer, from which it "appears that there are branches from the natural streams feed- "ing other tanks belonging to Government.

"However that may be, the claimant's right to the water that "flows naturally into his tank without prejudice to what may "naturally flow into other channels is valid. To this extent, "therefore, the claimant's right is admitted and recorded under "section 11 of the Forest Act."

The Subordinate Judge dismissed plaintiff's suit.

Plaintiff appealed.

Ramakrishna Ayyar and *Seshachariar* for appellant.

The Government Pleader (Mr. *Powell*) for respondent No. 3.

Pattabhirama Ayyar for respondent No. 1.

Sivarama Ayyar for respondents Nos. 1 and 2.

JUDGMENT.—The question in this appeal relates to the rights of the parties to the use of the natural stream called Kattar or Pedukulam.

The stream rises in, and flows through, Government lands, before it empties itself into the Pedukulam tank, which is situated within the zamindari of the plaintiff.

The defendants Nos. 1 and 2 are persons who hold land under Government, which land is now partly irrigated by a channel taken off from the said stream within the limits of the Government land above the zamindari.

The third defendant is the Secretary of State for India in Council.

Plaintiff sues to establish his exclusive right to the waters of the stream and for an injunction to restrain the defendants from in any way interfering with that exclusive right.

This claim to exclusive right to the water was put forward before the Forest Settlement officer in 1886, and was by him disallowed after due enquiry under Act V of 1882 (The Madras Forest Act).

The plaintiff did not appeal against that decision, and it therefore became final.

The Subordinate Judge, therefore, held that the plaintiff was precluded from re-agitating the question in this suit.

The plaintiff, as appellant before us, contends that the Subordinate Judge was in error, on the ground that the Forest

SANGILI VEERA PANDIA CHINNA TAMBIAR v. SUNDARAM AYYAR.

Settlement officer had no jurisdiction to give an adjudication on the question. The appellant's argument is that the exclusive right which he now claims over the water is not one of those rights which are specified in section 10 or 11 of the Act, and in regard to which alone the Forest Settlement officer had jurisdiction. We cannot accept this contention. As a mere riparian proprietor the plaintiff could only have a right to the lawful use of the water flowing through his land subject to the similar rights of other riparian proprietors, but his claim to the exclusive use of the water shows that he claimed more than the rights of a riparian proprietor. Now a claim to use the water of a natural stream in a manner not justified by natural right is undoubtedly a claim to an easement. (Gale on Easements, p. 20, 6th edition.)

In other words, the right claimed by the plaintiff was, in the language of Lord Watson in *Dalton* v. *Angus*(1), "a right of "property in the owner of the dominant tenement—not a full or "absolute right—but a limited right or interest in land which "belongs to another whose *plenum dominium* is diminished to the "extent to which his estate is affected by the easement."

It seems, therefore, clear that the right claimed by the plaintiff was a right in respect of water flowing in a defined channel on Government land, that is of a water-course, and, therefore, within the jurisdiction of the Forest Settlement officer under section 11.

It is contended by the appellant that the rights of way, pasture and forest produce referred to in clauses (*a*), (*c*) and (*d*) of the section are rights to be exercised on the land itself, and that, by analogy, the right to a water-course referred to in clause (*b*) must be of a similar restricted kind. There is, in our opinion, no ground for such a limitation, but even if it were otherwise, the right which the plaintiff claims was such as falls within the words "a right in or over any land" in the first line of the section, and was, therefore, a right in respect of which the Forest Settlement officer had jurisdiction to adjudicate under section 10.

In a word, the right claimed was one on which the Forest Settlement officer had a right to adjudicate either under section 10 or section 11, and in either case, the appellant's objection that he had no jurisdiction fails. The result is that on this ground

(1) L.R. 6 App. Cas. 740 at p. 830.

alone the decree of the Subordinate Judge dismissing the suit must be upheld.

It was, however, urged that even if the plaintiff had not an exclusive right to the water of the stream, he had a right as a lower riparian proprietor to obtain an injunction to restrain the defendants from using the channel inasmuch as such user was in excess of the third defendant's right as a higher riparian proprietor. In regard to this we observe that neither in the plaint, nor when framing issues, did the plaintiff rely on his rights as a riparian proprietor, or raise any issue as to whether the defendants had used the water in a manner not justified by their riparian rights, and the question has not been tried. Considering how long the matter has been in dispute we do not think we should be justified in allowing the plaintiff to raise at this stage a fresh issue of fact which he might and ought to have raised in the Lower Court.

We must, therefore, dismiss the appeal with costs.

APPELLATE CIVIL.

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

RAGAVENDRA RAU AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

JAYARAM RAU (PLAINTIFF), RESPONDENT.*

1897. March 10, 11, 30.

Hindu Law—Marriage—Prohibited degrees.

A marriage between a Hindu and the daughter of his wife's sister is valid.

APPEAL against the decree of E. J. Sewell, District Judge of North Arcot, in Original Suit No. 41 of 1893.

Suit for partition by the adopted son of one Narasinga Rau against the undivided nephew of the latter.

The facts of this case sufficiently appear from the judgment.

Sankaran Nayar and *Narayana Rau* for appellants.

Bhashyam Ayyangar, *Pattabhirama Ayyar* and *Shadagopachariar* for respondent.

JUDGMENT.—That the late Narasinga Rau's widow Seshammal did in fact adopt the respondent as the son of her husband was

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* Appeal No. 111 of 1896.