jungle that I know of. There is no assessed jungle. The wargdar collects leaves from Sulaimalai and Ballamalai slopes. Before reservation they collected leaves from the whole slopes. The wargs have a right to 100 yards only margin. Other wargdars before reservation removed leaves, etc., from the hill slopes above their wargs for greater distances than 100 yards."

All this evidence shows that the claimants, though using the leaves and manure of the forest for the benefit of their warg lands, did so not by reason of any proprietary right in the forest, but in accordance with the well-known *kumaki* and *netticut* privileges sanctioned by Government in favour of wargs adjacent to the Government forests. The appellants' claim must therefore be disallowed and their appeal be dismissed with costs, except those provided for in the order of this Court, dated 4th December 1901.

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## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice Benson.*

RAJARATHNA NAIDU (PLAINTIFF), APPELLANT,

*v.*

NARASIMHA CHARIAR (DEFENDANT), RESPONDENT.*

1904. December 2, 7.

*Rent Recovery Act (Madras) VIII of 1865, s. 9—Power-of-attorney granted by shrotriemdar to exercise rights under the Act—Power coupled with interest irrevocable—Acceptance of patta by tenants with knowledge of grantee's interest—Suit by grantee to enforce acceptance of puttahs—Maintainability.*

A, a shrotriemdar gave the plaintiff a power-of-attorney authorising him to exercise the rights of a shrotriemdar under Act VIII of 1865. A, subsequently, purported to revoke the power-of-attorney. He then tendered pattas to the defendants which they accepted. The plaintiff tendered pattas for the same fasli which the defendants refused on the ground that they had already accepted pattas from A. The defendants were aware at the time they accepted A's pattas, that his right to tender them was disputed by plaintiff. On a suit being filed by plaintiff to enforce acceptance of the pattas:

*Held*, that the power-of-attorney being coupled with an interest was in law irrevocable and the defendants were not discharged from their liability.

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* Second Appeal No. 275 of 1903, presented against the decree of A. C. Tate, Esq., District Judge of Chingleput, in Appeal Suit No. 571 of 1902, presented against the decision of S. M. V. Woosman Sahib, Head-quarters Deputy Collector of Saidapet Division, in Summary Suit No. 57 of 1902 (*vide* Second Appeal Nos. 276 to 313 of 1903).

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SUIT to enforce the acceptance of pattas. The facts material to the case appear in their Lordships' judgment. The Deputy Collector dismissed the plaintiff's suit, which dismissal was confirmed on appeal by the District Judge.

Plaintiff preferred this second appeal.

*T. V. Seshagiri Ayyar* for appellant.

*V. C. Seshachariar* for respondent.

JUDGMENT.—These are appeals from decrees of the District Court of Chingleput dismissing suits under section 9 of Act VIII of 1865 for the acceptance of pattas.

For the purposes of the point of law (which was argued) before us the following facts may be taken to have been found or admitted :

In 1898 the shrotriemdar gave to the plaintiff a power-of-attorney authorising the plaintiff to exercise the rights of the shrotriemdar under the Act of 1865.

This power, being coupeld with an interest, was in law irrevocable. The shrotriemdar purported to revoke this power-of-attorney, and gave notice to the defendants that he had done so. He then tendered pattas to the defendants which the defendants accepted. At the time the defendants accepted the pattas they were aware that the shrotriemdar's right to tender the pattas was disputed by the plaintiff. The plaintiff subsequently presented pattas for the same fasli and the defendants refused to accept them on the ground that they had already accepted pattas from the shrotriemdar.

The question is whether the defendants are discharged from their liability to the plaintiff by reason of their having already accepted pattas from the shrotriemdar. The District Judge decided the point in favour of the defendants upon the ground that as the relation of principal and agent existed between the shrotriemdar and the plaintiff, and the pattas tendered by the shrotriemdar had been accepted, the plaintiff was not entitled to tender second pattas by reason of the fact that the shrotriemdar had acted in contravention of the contract with the plaintiff in himself tendering the pattas. On behalf of the defendants it was contended before us that the plaintiff's only remedy was to sue the shrotriemdar for damages for having derogated from his own grant. We do not think that this contention is well founded. It is not necessary for us to consider whether the defendants

would have had a good defence if at the time they accepted the shrotriemdar's pattas, they had been unaware that the plaintiff disputed the shrotriemdar's right to tender the pattas. There is no express finding on the point but it seems clear to us (and the learned vakil for the defendants did not contend otherwise) that when the defendants accepted the shrotriemdar's pattas they were aware that the right to tender the pattas was claimed by the plaintiff by virtue of the authority which had been given to him by the shrotriemdar. This authority was in law irrevocable; and this distinguishes the present case from the class of cases where payment to the agent has been held to be a good discharge (see, for instance, *Venning* v. *Bray*(1)).

The principle which governs the present case is thus stated in Story on 'Agency.' In dealing with the exceptions to the general rule that the principal may sue upon a contract made by the agent in the same manner as if he had personally made it, the learned author says: "Another exception is where the agent has a lien or claim upon the property bought or sold, or upon its proceeds which is equal to or exceeds the amount or value thereof; for in such a case (as we have seen), the rights of the agent are paramount to those of the principal; and the principal has no right to sue thereon unless with the consent of the agent; and if he does sue, and the other party has received notice of the lien, the suit will be ineffectual or at the peril of the party sued. If any other doctrine were to prevail, the right of lien of the agent might be defeated at the mere will of the principal." No doubt the case of *Engleton* v. *The East India Railway Company*(2) to which our attention was called on behalf of the appellant may be distinguished on the ground that there was an assignment of property, whereas here there was only an assignment of a right, but the basis of the decision appears to be that the defendants who had received notice from the party who had given the original authority to the plaintiff to take delivery of the goods to give delivery to a person other than the plaintiff were not discharged from liability to the plaintiff for the reason that the authority which had been given to the plaintiff was an authority coupled with an interest and was therefore irrevocable. See the passage in the judgment of Sir R. Couch on page 601.

(1) 2 B. & S., 502. (2) 8 B.L.R., 581.

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As we think the learned Judge was wrong in dismissing the suits on the ground taken by him, we must set aside his decrees and remand the cases to him for disposal on the other points in the cases.

Costs will abide the event.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Benson and Mr. Justice Moore.*

1904. November 24, 28.

ALGARASAWMI TEVAN AND OTHERS (ACCUSED NOS. 1 AND 3 TO 13), PETITIONERS,

*v.*

EMPEROR, RESPONDENT.*

*Indian Penal Code—Act XLV of 1860, s. 379—Theft—Dishonest taking*—Bonâ fide *claim of ownership by accused over property in possession of third party—Disputed ownership of land—Possession summarily taken by Revenue authorities—Province of Civil Courts to decide questions of ownership between Government and private persons.*

The petitioner was convicted of theft of certain bamboos which he said he cut on his own puttah land, but which the prosecution alleged he cut on Government poramboke land adjacent to his own. Prior to his conviction, disputes had arisen between the Revenue authorities and the petitioner regarding the ownership of the land. The petitioner contended that he *bonâ fide* believed the bamboos to be his property at the time he cut and removed them. The Magistrate, finding that the Revenue authorities had taken possession of the land at the time the bamboos were removed convicted the petitioner:

*Held*, that the conviction was wrong. The questions to be considered were, (1) whether the bamboos did in fact belong to the petitioner or to Government; (2) whether if they did not belong to the petitioner he *bonâ fide* believed they did.

It is the province of the Civil Courts to decide questions of ownership of land between Government and private parties, and if the Revenue authorities take summary possession of land as in the present case, they become mere trespassers and there is nothing dishonest in the owner taking possession of his own property.

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* Criminal Revision Case No. 350 of 1904, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of G. H. B. Jackson, Esq., Head Assistant Magistrate of Sattur Division, in Criminal Appeal No. 25 of 1904, presented against the judgment of Mr. S. S. William, Second-class Magistrate of Watrap, in Calendar Case No. 103 of 1904.