APPELLATE CIVIL.

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

KANEMAR VENKAPPAYYA (SECOND DEFENDANT), APPELLANT,

v.

KRISHNA CHARIYA (PLAINTIFF)), RESPONDENT *

1907. August 20. November 8.

Hindu Law—Son's liability for father's debts—Son liable for father's misappropriation when such misappropriation amounts only to a breach of civil duty.

Where an undivided Hindu father misappropriates money received by him for the purpose of being paid to others in the course of a transaction entered into by him for the benefit of the family, and under circumstances which constitute such misappropriation a mere breach of civil duty and not a criminal act, the undivided son's interest in the joint family property is liable for the repayment of the monies so misappropriated to the person entitled to be paid.

McDowell & Co. v. *Ragava Chetty* (I.L.R. 27 Mad., 71), distinguished.

THE first defendant was the father of the second. The first defendant started a *Kuri* fund consisting of 20 persons for Rs. 1,000 and as manager thereof, the first defendant took the first year's subscription of Rs. 1,000 without any interest. Every subsequent year during the term of the Kuri, the first defendant was bound to pay his own subscription, to collect the subscription of the other members and to pay the total amount so collected to the successful subscriber each year.

The first defendant having failed to pay to the plaintiff, who was the successful subscriber in a subsequent year, the amount payable to him, the plaintiff obtained a decree against the first defendant in Original Suit No. 243 of 1899 for the amount due to him. In execution he attached the family properties of first defendant. The second defendant put in a claim petition and his one-half share was released from attachment. This suit was brought by plaintiff to declare his right to attach and bring to sale the interest of the second defendant in execution of the decree in Original Suit No. 243.

* Second Appeal No. 1226 of 1904, presented against the decree of H.O.D. Harding, Esq., District Judge of South Canara, in Appeal Suit No. 279 of 1904, presented against the decree of Mr. C. D. J. Pinto, District Munsif of Mangalore, in Original Suit No. 409 of 1902.

KANEMAR VENKAPPAYYA. v. KRISHNA CHARIYA.

The District Munsif dismissed the suit.

His decision was reversed on appeal by the District Judge who decreed in favour of plaintiff.

The second defendant appealed.

K. Narayana Rau for appellant.

K. P. Madhava Rau for respondent.

JUDGMENT.—We think that the decree of the District Judge is right. His finding is that the first defendant as manager of the undivided Hindu family, consisting of himself and the second defendant, entered into the Kuri transaction in 1889, received Rs. 1,000 without any deduction in that year in consideration of his undertaking to manage the fund, to make collections from the other members, and to dispose of the collections in accordance with the contract entered into by him with the other members. He has found that this Kuri transaction was entered into for the benefit of the family and that the sum of Rs. 1,000 was received for the family benefit. In accordance with the terms of the contract then made by the first defendant he was bound to dispose of the collections subsequently made by him in a certain way. He was bound to pay the plaintiff certain sums which he collected in 1893 and 1899, but he failed to do so, and the plaintiff obtained a decree against him, and now sues for a declaration that the family property, including the second defendant's share of it, is liable to satisfy the decree. For the second defendant it is contended that the father in not paying the sums collected was guilty of criminal misappropriation of those sums and that the son is not liable for the criminal acts of his father. Reliance is placed on the case of *McDowell & Co.* v. *Ragava Chetty*(1). That case, however, is not on all fours with the present case. There the Court expressly based their decision on the ground that the money was taken by the father and misappropriated under circumstances which constituted the taking itself a criminal offence, and they pointed out that this distinguished the case from that of *Natasayyan* v. *Ponnusami*(2) where the father's act though characterized by the Judges as dishonest, amounted to nothing more than a breach of a civil duty. In the present case it is not shown that the father's act amounted to more than a breach of a civil duty. The obligation of the father and the liability of the family property, to pay

(1) I.L.R., 27 Mad., 71. (2) I.L.R., 16 Mad., 99.

the plaintiff arose by virtue of the contract entered into by him as manager of the family and for its benefit, coupled with the subsequent receipt of the collections. The fact that the father failed to fulfil his obligation cannot free the family property from its liability for the debt. We dismiss the second appeal with costs. This judgment is in review of our judgment, dated the 20th August 1907.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Wallis.

VADAPALLI NARASIMHAM (PLAINTIFF), APPELLANT,

v.

DRONAMRAJU SEETHARAMAMURTHY AND OTHERS (DEFENDANTS, NOS. 1 TO 9), RESPONDENTS.*

1907. November 14, 15. December 3.

Limitation Act—Act XV of 1877, sched. II, arts. 139, 144—Landlord and tenant—Transfer of Property Act, s. 116—Representative of a tenant by sufferance a trespasser and cannot, without his consent, be converted by the lessor into a yearly or monthly tenant—Suit for possession against such representative governed by art. 144 and not art. 139 of sch. II of the Limitation Act—Civil Procedure Code, ss. 281, 283—Order passed under s. 281 is not binding on judgment-debtor under s. 283 unless he is a party to the proceedings in which the order was passed.

A tenant holding over after the expiry of his term becomes a tenant on sufferance and the landlord's assent alone will suffice to convert such a tenancy into a tenancy from year to year or from month to month according to the nature of the original case.

The provisions of section 116 of the Transfer of the Property Act indicate the rule which is *primâ facie* applicable in cases not coming under the Act.

Sayaji Bin Habaji Bhadvalkar v. *Umajni Bin Sadoji Ravut* (3 B.H.C.R. App. C.J., 27), referred to.

The representatives of a tenant on sufferance are however mere trespassers, and the lessor cannot, by his assent alone, convert such representatives into tenants without their concurrence.

English and American cases on the point referred to and considered.

*Second Appeal No. 1628 of 1904, presented against the decree of J. H. Munro, Esq., District Judge of Vizagapatam, in Appeal Suit No. 41 of 1914, presented against the decree of M. R. Ry. A. S. Krishnaswami Ayyar District Munsif of Yellamanchili, in Original Suit No. 212 of 1903.