WALLIS AND MILLER, JJ.

ADIVI SURYA-PRAKASA RAO v. NIDAMARTY GANGARAJU.

In the result the appeal is allowed and the plaintiff's suit decreed with costs throughout.

MILLER, J.—I do not think this is at all a clear case but I am not prepared to differ.

If the power to adopt is at an end, then on the authorities no consent can revive it, but if the only obstacle to the divesting of Ramanamma's estate is the fact that it had vested in her and was not in Peramma at the time of the adoption, the power to adopt being still alive, then I find some difficulty in seeing why the obstacle should not be removeable by consent. And it is not very clear to me that the power to adopt is at an end in this case within the meaning of the Privy Council rulings. In all the cases cited the deceased had a son natural or adopted before the proper limit was reached: nevertheless seeing that in *Rajah Vellanki Venkata Krishna Row* v. *Venkata Rama Lakshmi Narasayya*(1) the fact that the adoption is in derogation of another estate is stated as the feature which distinguished that case from *Mussumat Bhoobun Moyee Debia* v. *Ramkishore Acharj Chowdhry*(2), I cannot say that the rule which my learned brother proposes to apply could not be deduced from the decisions to which he has referred.

I therefore, though with some hesitation, agree in making the decree which he proposes to make.

APPELLATE CIVIL.

Before Mr Justice Benson, and Mr. Justice Krishnaswami Ayyar.

1909. November 1, 2.

SUBRAMANIA IYER (DEFENDANT), APPELLANT,

v.

RUNGAPPA REDDI AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Contract Act IX of 1872, s. 69—'Interested in paying'—Meaning of—When payment not voluntary.

A person is interested in making a payment within the meaning of section 69 of the Contract Act, when there is an apprehension of any loss or inconvenience or of any detriment capable of being assessed in money.

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* Second Appeal No. 35 of 1907.

(1) (1876) L.R., 4 I.A., 1 at p. 9. (2) (1865) 10 M.I.A., 279.

A person whose immoveable property is attached for a debt due by another is 'interested' in paying the debt to save the property and can recover from the person by whom it is due.

Payment under such circumstances is not a voluntary payment.

SECOND APPEAL against the decree of D. Venkoba Rao, Subordinate Judge of North Arcot, in Appeal Suit No. 575 of 1904, presented against the decree of V. K. Desikachariar, District Munsif of Arni, in Original Suit No. 326 of 1903.

Suit for recovery of money. Plaintiff's case was as follows :—

Plaintiff purchased for Rs. 1,950 the properties of defendant by a sale deed, dated the 22nd September 1902. On the 24th September 1902, one Kanniah Chetti got the said properties attached before judgment in Original Suit No. 764 of 1902 on the file of the Tindivanam Munsif's Court for a debt of Rs. 526 and odd due to him by the defendant. It was alleged that as the defendant had requested the plaintiff to discharge Kanniah Chetti's debt on his behalf and had also promised to repay the amount paid by him, and that in view also, to save the properties purchased, plaintiff paid to the said Chetti on 21st October 1902 Rs. 550 in full satisfaction of his claim including costs. The plaintiff sued to recover the said amount with interest at 1 per cent. per mensem in the shape of damages.

The defendant pleaded *inter alia* that he did not request the plaintiff to pay the amount. The District Munsif found the request not proved and dismissed the suit. On appeal the Subordinate Judge held that, though the request was not proved, the plaintiff was interested in paying the amount and passed a decree for the same with interest at 6 per cent.

Defendant appealed to the High Court.

T. R. Ramachandra Ayyar and *T. R. Krishnaswami Ayyar* for appellant.

L. A. Govindaraghava Ayyar for second respondent.

JUDGMENT.—Property purchased by the plaintiffs from the defendant was attached before judgment in a suit instituted by a third party for recovery of a debt due by the defendant. The plaintiffs paid the money and sue for its recovery. The question is whether the plaintiffs were "interested in the payment of the money" within the meaning of section 69 of the Contract Act. In his notes to section 69 Sir Frederick Pollock says: "The words

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SUBRAMANIA IYER v. RUNGAPPA REDDI.

'interested in the payment of money which another is bound by law to pay' might include the apprehension of any kind of loss or inconvenience, or at any rate of any detriment capable of being assessed in money." In *Tulsakunwar* v. *Jageshar Prasad*(1), the Allahabad High Court, in a case of attachment of moveables belonging to the plaintiff for revenue due by the defendant held that the plaintiff was interested in the payment for the release of the goods attached and was entitled to be reimbursed by the defendant. It may be said that mere attachment of immoveable property does not constitute a trespass like the attachment of goods. But there is undoubtedly reasonable apprehension of loss or inconvenience and even detriment assessable in money. Whether it is so in every case of attachment so that even where there is not the shadow of a foundation for a claim to proceed against the property, the person whose property is attached can be said to be interested in making a payment it is unnecessary to determine. On the facts of this case we think the view was justifiable that the plaintiffs were interested. It may be doubtful whether the word 'interest' covers any interest other than pecuniary. (See, however, *Vaikuntam Ammangar* v. *Kallipiran Ayyangar*(2) and *Vaikuntam Ammangar* v. *Kallipiran Ayyangar*(3).) The Privy Council said in *Dulichand* v. *Ramkishen Singh*(4): "In this country if the goods of a third person are seized by the sheriff and are about to be sold as the goods of the defendant and the true owner pays money to protect his goods and prevent the sale, he may bring an action to recover back the money he has so paid; it is the compulsion under which they are about to be sold that makes the payment involuntary." The case of *Valpy* v. *Manley*(5) referred to by the Privy Council is authority for the position that the payment by the plaintiff under circumstances similar to those found in the present case is not voluntary. The decision in *Bojasellappa Reddi* v. *Vridhachala Reddi*(6) relied on by Mr. Ramachandra Ayyar is only authority for the position that the defendant should be bound by law to make the payment which the plaintiff is interested in making.

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(1) (1906) I.L.R., 28 All., 563.
(2) (1903) I.L.R., 26 Mad., 497.
(3) (1900) I.L.R., 23 Mad., 512.
(4) (1881) I.L.R., 7 Calc., 648 at p. 653.
(5) (1845) 68 R.R., 778.
(6) (1907) I.L.R., 30 Mad., 35.

We consider the Subordinate Judge is right in deciding in favour of the plaintiff. The second appeal fails and is dismissed with costs.

BENSON AND KRISHNASWAMI AIYAR, JJ.

SUBRAMANIA IYER v. RUNGAPPA REDDI.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Krishnaswami Ayyar.

GAVARA RAMANNA (PLAINTIFF), APPELLANT,

v.

ADABALA RATTAYYA (DEFENDANT), RESPONDENT.*

1909. November 29.

Hereditary Village Office Act (Madras), III of 1895, ss. 13, 21—S. 21 is no bar to suit for recovery of land.

A suit in the Civil Courts for land, not based on the ground that such land constituted part of the emoluments of any of the offices described in section 13 of Madras Act III of 1895, is not barred by section 21 of the Act.

The effect of the words in section 13 of the Act, "but such decision, etc.," is to preserve the jurisdiction of the Civil Courts even in cases where the Collector decided the case on the assumption mentioned therein and not to oust such jurisdiction where he did not.

SECOND APPEAL against the decree of N. Lakshmana Rao, Subordinate Judge of Ellore, in Appeal Suit No. 232 of 1905, presented against the decree of P. V. Ramachendra Ayyar, District Munsif of Tanuku, in Original Suit No. 431 of 1904.

Suit to recover lands on the ground that they were the private property of the plaintiff.

In a previous summary suit brought against the plaintiff by the defendant under Madras Act III of 1895 for the recovery of these lands on the ground that they formed the emoluments of the office of village Naik it was contended by the present plaintiff, who was second defendant in the summary suit, that the revenue of the lands and not the lands themselves formed the emoluments of the office. The Sub-Collector found that the lands formed part of the office inam but dismissed the suit on the ground that the defendant was not duly appointed to the office.

On appeal, the Collector held that defendant was validly appointed and decreed possession of the lands.

* Second Appeal No. 1412 of 1907.