

and *Doraisami Tever v. Lakshmanan Chetty*(1) is clearly distinguishable.

Further the English cases which were not referred to in the argument before us show that in a case of this kind the defendant's failure to pay according to his contract at once gives rise to a cause of action in which substantial damages are recoverable; *Mayne on Damages*, page 334, 6th Edition; "Where the defendant's promise is an absolute one to do a particular thing, as to discharge or acquit the plaintiff from such a bond, an action may be brought the moment he has failed to perform his contract and a plea of *non damnificatus* (he sustained no damages) would be bad. Therefore where a party entered into a covenant to pay off encumbrances by a particular day, or to take up a note, it was held that an action might be brought and damages to the extent of the encumbrances and note respectively might be obtained though no actual injury had been sustained." *Lethbridge v. Mylton*(2) and *Loosemore v. Radford*(3). These cases were followed in *In Re Allen*(4).

The appeal is dismissed with costs.

AYLING, J.—I agree.

RAMALINGA-
THEUDAYAR
v.
UNNAMALAI
ACHI.
—
WALLIS, J.

AYLING, J.

APPELLATE CRIMINAL.

Before Mr. Justice Tyabji.

Re SIVANUPANDIA THEVAN alias APPAVU
THEVAN (ACCUSED), PETITIONER.*

1914.
March 23.

Indian Penal Code (Act XLV of 1860), sec. 424—Conviction of a ryot under Madras Estates Land Act (I of 1908), for dishonest concealment and removal of crops, legality of—Madras Estates Land Act (I of 1908), ss. 73 and 212, no bar to conviction.

The accused who was a ryot under the Madras Estates Land Act and who was bound under the conditions of his tenure to share the produce of his land with the landholder in a certain proportion, dishonestly concealed and removed the produce, thus preventing the landholder from taking his due share.

Held, that the provisions of sections 73 and 212 of the Madras Estates Land Act were no bar to a conviction of the ryot under section 424, Indian Penal Code, for the dishonest concealment and removal.

(1) (1904) 14 M.L.J., 285.

(2) (1831) 2 B. & Ad., 772; s.c., 109 E.R., 1332.

(3) (1842) 9 M. & W., 657.

(4) (1898) 2 Ch., 345.

* Criminal Revision Case No. 98 of 1914.

Re
SIVANU-
PANDIA
THEVAN.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the judgment of K. S. SRINIVASA ACHARIYAR, the Sub-Divisional Magistrate of Koilpatti, in Criminal Appeal No. 68 of 1913, preferred against the judgment of T. S. PIRAVIPERUMAL PILLAI, Second Class Magistrate of Sankaranayinarköyil, in Calendar Case No. 365 of 1913.

The facts of the case appear from the judgment of the Lower Appellate Court, which is as follows :—

“Appellant was convicted for dishonest concealment and removal of certain paddy which as a ryot he ought to have shared with the Malavan Cottai Estate. . . . Besides the general grounds that the prosecution story is false and that of the defence, true, the appellant’s vakil urges that the fraudulent removal even if true is not an offence under section 424, Indian Penal Code ; as the (Madras) Estates Land Act lays down that in such a case of removal the produce may be deemed to have been as full as the fullest crop of the same description in the neighbourhood on similar land for that harvest. Please *vide* section 74 (4).

“It is also urged that the only provisions of the Act are contained in section 212 and nothing is an offence (as between landlord and tenant) which is not covered by this section. I do not agree with this contention. The provisions of the Penal Code which are general cannot be overridden by the Estates Land Act unless such an intention is expressed by the legislature itself. The penal provisions of section 212 are in addition to those contained in the general law, the Penal Code, and are not exclusive of the latter.

“The defence no doubt alleged that there was no such concealment or removal of paddy as is spoken to by the prosecution witnesses. But I agree with the Lower Court that this evidence which is discrepant in essential particulars is not credible.

“I accordingly confirm the conviction and sentence.”

G. S. Ramachandra Ayyar for the petitioner.

TYABJI, J.

TYABJI, J.—It is argued that sections 73 and 212 of the Estates Land Act prevent the applicability of section 424 of the Indian Penal Code, because, it is argued, the Estates Land Act must be construed as a complete Code relating to offences between landlord and tenant in cases where the latter Act applies. I am unable to accede to the contention. It seems to me that the proper construction of these sections is that certain acts which might not come within the definition of any offence referred to

in the Indian Penal Code are also made punishable; and that the penal provisions of the Estates Land Act leave the provisions of the Indian Penal Code intact. I am of opinion, therefore, that this case must be dismissed.

Re
SIVANU-
PANDIA
THEVAN.
TRABJI, J.

APPELLATE CIVIL.

Before Mr. Justice Ayling.

V. SESHAGIRI ROW AND OTHERS (DEPENDANTS), PETITIONERS,

v.

1914.
April 18,
17 and 20.

G. NARAYANASWAMI NAIDU, RECEIVER, MEDUR
ESTATE OF ELLORE (PLAINTIFF), RESPONDENT.*

Jurisdiction—*The Suits Valuation Act (VII of 1887), sec. 8*—*Suit to eject a tenant holding over*—*Court Fees Act (VII of 1870), sec. 7, cl. (xi) (cc)*—*Madras Civil Courts Act (III of 1873), sec. 14.*

The effect of amendment of section 7 of the Court Fees Act (VII of 1870) by adding to it clause (xi) (cc) is that a suit to recover immovable property from a tenant is governed for purposes of jurisdiction by section 8 of the Suits Valuation Act (VII of 1887) and not by section 14 of the Madras Civil Courts Act (III of 1873); so that in the case of such suits the valuation for purposes of jurisdiction is the same as for Court-fees.

Chalasaamy Ramiah v. Chalasaamy Ramaswami (1891) 11 M.L.J., 155, distinguished.

PETITIONS under section 115 of the Code of Civil Procedure (Act V of 1908), praying the High Court to revise the order of F. A. COLERIDGE, the acting District Judge of Masulipatam, in Miscellaneous Appeals Nos. 6 and 7 of 1912, preferred against the order of V. C. MASCARENHAS, the Subordinate Judge of Ellore, in Original Suits Nos. 18 and 19 of 1911, respectively.

These are two suits by a zamindar to recover his private lands from his tenants who were holding over after the expiry of the period of their one year's lease. Each suit was valued for purposes of jurisdiction at more than Rs. 2,500 made up of the market value of the lands and one year's mesne profits, and for purposes of court fees valued at less than Rs. 2,500 made up of one year's rental as per section 7, clause (xi) (cc) of the Court Fees

* Civil Revision Petitions Nos. 312 and 313 of 1913.