APPELLATE CIVIL.

Before Sir Walter Salis Schwabe, K.C., Chief Justice, Mr. Justice Oldfield and Mr. Justice Coutts Trotter.

1922, March 13.

CHOKKALINGAM CHETTIAR (PLAINTIFF), APPELLANT,

v.

PALANI AMBALAM (DEFENDANT) RESPONDENT. *

Madras Estates Land Act (I of 1908), ss. 13 (3) and 187 (1)—Improvements made by tenant at his own expense—Contract for higher rent made before the passing of the Act—Improvements made by tenant after the Act—Right of landholder to higher rent under the contract, whether taken away by the Act.

A landholder is not entitled to recover from his tenant rent at wet rates for land which the latter has been able to cultivate wet in consequence of improvements made at his own expense on the strength of a contract made before the Estates Land Act was passed, the improvements however having been made after the passing of the Act.

Section 13 (3) of the Act, read with section 187 (1) is applicable to contracts made before as well as after the passing of the Act.

Dictum in *Venkata Perumal Raja* v. *Ramudu* (1916) I.L.R., 39 Mad., 84, distinguished.

LETTERS PATENT APPEAL against the judgment of KRISHNAN, J., in Second Appeal No. 999 of 1920.

This appeal under the Letters Patent arises out of a difference of opinion between KRISHNAN and ODGERS, JJ., who heard the second appeal (Second Appeal No. 999 of 1920) from the decision of the District Judge on appeal in a suit for rent instituted by the landholder against his tenant in the Court of the Special Deputy Collector of Ramnad. The plaintiff claimed rent at wet rate for paddy grown on punja or dry lands which were converted into nanja (wet) lands by improvements

* Letters Patent Appeal No. 25 of 1921.

effected by the tenant at his sole expense in 1912–13. The plaintiff claimed wet rate of rent on such lands on account of improvements made by the tenants subsequent to the passing of the Act, on the strength of a contract made with the tenant in 1885, which provided for higher rent in case wet crops were raised on punja lands, and did not except cases where improvements were made at the tenants' own expense. The learned District Judge held that the plaintiff was not entitled to wet rate of rent on account of the improvements as they had been effected at the tenant's own expense. The plaintiff preferred a second appeal, which was heard, as already stated, by KRISHNAN and ODGERS, JJ., who differed. The former learned Judge held, *inter alia*, that section 13 (3) applied to contracts made before as well as after the passing of the Estates Land Act, especially when the improvements were made at the sole expense of the tenant after the passing of the Act; the latter held that the Act did not apply to contracts made before the Act. The judgment of the former Judge prevailed and the Second Appeal was dismissed in accordance therewith. The plaintiff preferred this appeal under the Letters Patent.

C. V. Anantakrishna Ayyar for appellant.

S. T. Srinivasagopala Chari for respondent.

JUDGMENT.

SCHWABE, C.J.—The question is whether the plaintiff, landholder, is entitled to recover rent at wet rates from his tenant, the defendant, for land which the latter has been able to cultivate wet in consequence of improvements made at his own expense. The plaintiff claims that he is entitled to wet rates on the strength of a contract contained in Exhibit D of the year 1885, before the Estates Land Act was passed. The improvements

CHOKKALINGAM CHETTIAR v. PALANI AMBALAM. — SCHWABE, C.J.

were made after it was passed. KRISHNAN, J., has held that, in these circumstances, the plaintiff is not entitled to rely on his contract with reference to section 13 (3) of the Estates land Act.

It is no doubt true that as the plaintiff contends, such a contract would have been enforceable under the previous law, section 11 of Act VIII of 1865. The only authority relied on by the plaintiff is a dictum of KUMARASWAMI SASTRI, J., in *Venkata Perumal Raja* v. *Ramudu*(1), a case in which both the contract and the improvements were made before the passing of the present Act. The dictum was, therefore, unnecessary for the learned Judge's decision. The considerations which weigh with us are that (1) the wording of section 13 (3) exempts the ryot from liability to pay a higher rate of rent in consequence of improvements made at his sole expense, notwithstanding any usage or contract to the contrary and that wording is absolutely general; (2) that, as KRISHNAN, J., has observed, the connected reference to usage renders it unlikely in the extreme that the legislature intended to except contracts made before the Act, but not enforceable before it from this provision; (3) that the ryot is referred to in section 13 (3) as becoming liable to pay a higher rate of rent, inconsistently with the view that he had already become liable under a previous contract; lastly section 187 (1) must be read with section 13 and in the former the reference is to contracts made "before or after the passing of this Act." This indicates clearly that the intention of the legislature was to refuse to contracts made before, equally with contracts made after, the passing of the Act, any effect on the relation between the ryot and the landholder.

Taking this view, we dismiss the appeal with costs.

K.R.

(1) (1916) I.L.R., 39 Mad., 84.