APPELLATE JURISDICTION (*a*)

Referred Case No. 21 *of* 1863.

DEVA RAU *against* VENTESA ACHARIYAR.

In a suit by A on a bond in favor of B, the plaintiff may shew by oral evidence that the money secured by the bond was his own ; but where B has died, A must either entitle himself as B's personal representative or make B's personal representative a party to the suit.

1863. *November* 30. *R. C. No.* 21 *of* 1863.

CASE referred for the opinion of the High Court by R. B. Swinton, the Judge of the Court of Small Causes at Tanjore. The plaintiff sued for Rs. 74-5-8 and for Rs. 297-6-8 due respectively under two bonds in favour of one Kristnabáyi his sister, deceased. He did not sue as her heir, or personal representative, but rested his claim on the ground that the moneys lent, to secure the repayment of which the bonds were given, were his own, his sister having been a mere namelender. Kristnabáyi's personal representative was not a party to the suit.

The question submitted "whether it was open to the plaintiff to prove by oral evidence that certain money lent was his, the bonds being in the name of another person."

No counsel were instructed.

The Court delivered the following

JUDGMENT :—We are of opinion that it would be open to the plaintiff to show by oral evidence that the debt secured by the bonds was money advanced by him and on his behalf through his sister, the deceased, and so entitle himself to recover the amount due upon the bond in a suit properly framed: but to such suit it is obviously necessary that the personal representative of the deceased should be made a party. In the suit, as at present framed, the plaintiff cannot recover. He must either entitle himself as personal representative, or make the personal representative a party. Of course, if the bonds were made without any knowledge or notice on the part of the defendant that the funds were other than those of the deceased herself, he would be entitled to any defence, legal or equitable, which he would have been entitled to

(*a*) Present : Scotland, C. J. and Holloway, J.

against the deceased herself, or her personal representative. For these reasons we decide, in answer to the question submitted, that, if the suit had been properly framed, the plaintiff might have proved by oral evidence that the money lent was his, although the bonds were in another person's name.

1863. *November* 30. *R. A. No.* 21 *of* 1863.

NOTE.—This case overrules *Special Appeal No.* 79 *of* 1860, Mad. S. D., 1860, p. 212. And see *S. A. No.* 230 *of* 1859, ibid, p. 98.

APPELLATE JURISDICTION (*a*)

Regular Appeal No. 25 *of* 1862.

CHENNAPA NÁYUDU.....*Appellant.*
PITCHI REDDI and others.....*Respondents.*

Even with the permission of the Civil Court, a separte suit cannot be brought for mesne profits between the institution of the original suit and the execution of the decree thereon.

Act XXIII of 1861, Sec. 11 commented on.

1863. *November* 30. *R. A. No.* 25 *of* 1863.

THIS was a Regular Appeal against the decree of E. F. Eliott, Acting Civil Judge of Nellore, in Original Suit No. 18 of 1862, which had been instituted on the Civil Court's order on Miscellaneous Petition No. 158 of 1862. The plaintiff sued the defendants for rupees 1,212, being the value of grass of which the defendants had deprived the plaintiff for four years, at rupees 303 a year, between the institution of Original Suit No. 8 of 1858, before the late Principal Sadr Amin of Nellor, to recover lands on which the defendants were alleged to have encroached, and the execution of the decree in the same suit. The defendants pleaded that the institution of the separate suit for the loss of grass said to have been occasioned in the disputed land pending the final decision of the original suit was opposed to Sec. 9 of Act XXIII of 1861. The Civil Judge decreed that the defendants should pay the plaintiffs rupees 909, observing, however, that the institution of the suit appeared irregular under Sec. 11 of Act XXIII of 1861.

Rangayya Nayudu, for the appellant.

Mayne, for the respondents.

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