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of 1862.

Mayne for the petitioner, cited an unreported decision of the late Madras Sadr 'Adálat in *Civil Petitions Nos.* 203 of 1862, and 230 *of* 1862, on 11th August 1862, where it was held that the discovery of new evidence was on ground for appeal in the Sadr 'Adálat : that the application for review should be addressed to the lower court, but that the Sadr Adálţ will sanction such application.

Sadagopàlachàrlu for the defendant.

PER CURIAM.—We are not inclined to follow the decision cited by Mr. Mayne. This application appears to us unnecessary. If section 376 can be construed so as to admit of the right to a review of judgment in the present case (a point on which it is unnecessary to give an opinion), we think that the Court in which the petitioner brought his suit is the proper Court to apply to. The refusal of the present petition will of course not prejudice the right (if any) to make such application.

Petition dismissed.

APPELLATE JURISDICTION. (*a*)

Regular Appeal No. 38 *of* 1861.

SUBBAYA and others.....*Appellants.*

YARLAGADDA ANKINIDU.....*Respondent.*

When an island was formed in a river, the lands adjacent to the banks of which were part of a zamindári :—*Held*, that the island was not the waste land of any village or a portion of the holding of any ryots in the zamindári, but that the Zamindár possessed in it all the incidents of ownership, including the power of making leases.

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of 1861.

THIS was a regular appeal from the decision of C. R. Pelly, the Acting Civil Judge of Masulipatam, in Original Suit No. 47 of 1857.

Mayne and *Sloan* for the appellants, the first and second defendants.

Ràmànuja Ayyangàr for the third appellant, the third defendant.

Norton for the respondent, the plaintiff.

(*a*) Present : Strange and Holloway, J J.

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The facts and arguments sufficiently appear from the following

JUDGMENT :—The suit was brought to eject the defendants from certain lands situated in the Turakapallam lanka, an island alluvially deposited in the river Kistna. The plaintiff alleged that the defendants held under a lease from one Rám Dás his lessee.

The defendants denied the holding under Rám Dás, alleged a holding directly under the plaintiff and contended that plaintiff was entitled to the Zamindár's share only, and could not eject them as long as they paid it.

The Civil Judge decreed for the plaintiff, considering the lease under Rám Dás proved.

It was not, as indeed it could not be, denied that the property in the land in question resided in the plaintiff. But it was argued that, although the plaintiff had an election whether he would let this land to the defendants, that having exercised his election he was bound perpetually to renew, and could not eject the defendants, and the defendant's counsel referred to section 8, Regulation V of 1822(*a*).

It is unnecessary to give any opinion whether the view of the Civil Judge that the defendants held under Rám Dás is or is not correct, although with exhibit XXIX before us ("account shewing the amount of kist collected and remitted to the Zamindár by the karanams in 1265 (A. D. 1855-56) on Turakapallam lanka, which was rented by Rám Dás") it would be almost impossible for us to say that we are satisfied that he is wrong.

It is also unnecessary to give any opinion upon the construction of the Regulation, for the case is determinable.

(*a*) This section enacts that

First. The lands of under-farmers or ryots shall not be granted to other persons by proprietors or farmers under the provisions of sec. 10, Regulation XXX of 1802, until such proprietors or farmers shall have made application to the Collecor and obtained his leave for that purpose.

Second. If the collector on examination find the rates of the pattá tendered by the proprietor or farmer to be just and correct, the under-farmer or ryot shall be ejected under the Collector's order, unless he assent to the terms; but if the rate shall exceed the just rate prescribed, an order shall be issued by the Collector to the proprietor or farmer prohibiting the ejectment, and requiring the issue of a pattá within one month from the delivery of the order to him, under penalty for delay as provided in section 8, Regulation XXX of 1802.

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of 1861.

in a manner perfectly satisfactory to our minds from the contract between the parties.

The ieland deposited, until some act was done by the Zamindár, was not the waste land of any particular village, and still less was it a portion of the holding of any particular ryots. It rather resembled an entirely independent property over which the Zamindár possessed all the incidents of ownership. He might either let it or retain it. He let it to the defendants, and they agreed to take a lease for four years and to abandon the land at its conclusion. The proposition of the learned counsel for the appellants is that it matters not what the provisions of the contract between the parties, they are clearly subject to the incidents of perpetual renewal—that the Zamindár may not terminate his will, though the tenants may. Whether a special contract even for land which was the waste of the village of the lessees could be construed in this unexampled manner it is unnecessary to determine.

We are clearly of opinion that this is a simple question between lessor and lessee, and that the relation of Zamindár and ryot is wholly accidental.

It is therefore the simple case of a lease for four years, and the defendants, at its termination on refusal when requested to surrender, became either wrong-doers or tenants at the option of the Zamindár.

We are clearly of opinion that the decree of the Civil Judge is in all respects right, and we affirm it with costs.

Appeal dismissed.

NOTE.—See Inst. lib. II. tit. I. 22 ; D. xli. 1. 7. 4. 3.

And see *Mt. Imam Bandi* v. *Hurgovind Ghose* 4 Moo. I. A. C. 403 *Doe* v. *E. I. Co.*, 6 Moo. I. A. Ca. 267.