

APPELLATE JURISDICTION (a)

*Referred Case No. 7 of 1862.*ANNÁSVÁMI *against* NARRANAIYAN.

Where a mortgage-bond contained an agreement to repay the money with interest by a certain day, and proceeded thus "if I (the mortgagor) fail to pay the amount, then I will put you in possession of the land and you may enjoy it; and when I have the means I will redeem the land and pay the debt with interest and take back the bond":—*Held* that on the mortgagor's default the mortgagee might sue for the money, and that he was not bound to accept the land and forego his right of action.

1862.
Dec. 15.

R. C. No. 7
of 1862.

THIS was a case referred for the opinion of the High Court by R. B. Swinton, Judge of the Small Causes Court of Tanjore.

The facts sufficiently appear from the following judgment, which was delivered by

SCOTLAND, C. J.:—The plaintiff brought his suit for recovery of money upon a bond. In this instrument there occurred the following provision:—

"I (the defendant) agree to repay the same (the money lent) with interest within the 30th Vaikási of Durmati (10th June 1861), and if I fail to pay the amount, then I will put you in possession of the land (mortgaged for the debt) and you may enjoy it; and, when I have the means, I will redeem the land and pay the debt with interest and take back the bond."

The Judge of the Court of Small Causes at Tanjore puts the question for the consideration and decision of the High Court, "whether or not the plaintiff was bound to sue for possession of the land upon the failure of defendant to pay the debt, or whether he was at liberty to sue for the money?" and he has decreed in the plaintiff's favour for the money sued for, contingent upon the High Court's judgment on the aforesaid point of law.

We consider the plaintiff entitled to enforce the obligation for payment of the money of which the defendant had made default in payment within the time named. The

(a) Present Scotland, C. J. and Strange, J.

provision in the bond, allowing of the defendant placing the plaintiff in temporary possession of the land, is not a condition of a compulsory nature, binding the plaintiff to accept the land and forego his right to sue for the money or failure of payment within the stipulated time. The latter right remains absolutely in the plaintiff, notwithstanding the said provision ; and the Judge of the Court of Small Causes has properly determined that the defendant shall pay the money due by him to the plaintiff.

1862.
Dec. 15.

R. C. No. 1
of 1862.

APPELLATE JURISDICTION (a)

SABÁPATI MUDALIYÁR *against* NÁRÁVANSYÁMI
MUDALIYÁR.

Where an action on a contract was brought in the High Court and judgment was given to the plaintiff for rupees 454-13-4 :—*Held* that as the amount so found due was less than rupees 500 the plaintiff could not have his costs, unless the Judge who tried the cause certified that the action was fit to be brought in the High Court.

The 37th clause of the Letters Patent constituting the High Court does not give the Court an uncontrolled discretion as to costs in civil suits.

Act IX of 1850(b) sec. 101 is not repealed.

A special enactment is not impliedly repealed by a subsequent affirmative general enactment if the two enactments are not so repugnant as to be incapable of standing together.

HIS was an appeal by the plaintiff against the decree of Mr. Justice Bittleston in the suit of P. Sabápati Mudaliyár against R. Náráyansvámi Mudaliyár. The plaintiff claimed payment of rupees 601-5-4 for principal and interest secured by an instrument of mortgage in Tamil, dated the 10th of July 1854. The case came on before Mr. Justice Bittleston for settlement of issues. The defendant admitted the borrowing of the principal, the execution of the mortgage and the correctness of the particulars of the plaintiff's claim ; but, although no part of the principal had been repaid, the defendant contended that he was entitled to counter-interest on his payments of interest, under a clause in the mortgage-instrument, of which the following is a translation : " When the rupees I pay in small instalments amount to one hundred, then [at the rate of] one on every

1862.
Dec. 16, 17.

(a) Present Scotland, C. J. and Bittleston, J.

(b) An Act for the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.