

1862.  
September 6.  
R. A. No. 607  
of 1861.

However sound the decision of the Civil Judge, we consider that he was not competent to pass it on an appeal preferred by the first defendant. The appellant's interest in the land has, by his own account, ceased; and the tenth defendant, to whom the title is alleged to have passed, has submitted to the decree of the District Munsif.

We consequently set aside the decision of the Civil Judge, and affirm that of the District Munsif.

*Appeal allowed.*

APPELLATE JURISDICTION. (a)

*Civil Petition No. 284 of 1862.*

CÆMMERER *against* BIRCH.

*Ex parte* BROOKS.

No one but a party to a suit can appeal under Section 11 of Act XXIII of 1861 against an order passed in such suit.

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284 of 1862.

IN this case Cæmmerer was proceeding to enforce a judgment against Birch who had become insolvent, when Brooks, the official assignee of Birch, who was not a party to the suit, interposed on the ground that all Birch's property had vested in him. E. W. Bird, the Acting Civil Judge of Negapatam, passed an order rejecting Brooks' application. Brooks now appealed against the order.

*Miller* for the appellant, relied on sec. 11 of Act XXIII of 1861, which enacts that "all questions regarding the amount of any mesne profits which by the terms of the decree may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interest which may be payable in respect of the subject matter of a suit between the date of the institution of the suit and execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree or the like, and any other questions arising between the parties to the suit in which the decree was passed and relating to the execution of the decree, shall be

(a) Present : Strange and Frere, J.J.

determined by order of the Court executing the decree, and not by separate suit, and the order passed by the Court shall be open to appeal." 1862.  
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Mayne for the respondent Cæmmerer.

PER CURIAM :—As the official assignee was not a party to the suit, section 11 of Act XXIII of 1861, on which he relies, does not apply ; and there is no appeal from the order passed by the Civil Judge in this matter (a).

ORIGINAL JURISDICTION. (b)

ÁLVÁR CHETTI and others against VAIDILINGA CHETTI.

Act XIV of 1840 does not apply to contracts between Hindus.

By Hindu law a purchaser may recover in an action for breach of a contract to deliver goods not only double the earnest money, but also damages for the non-delivery.

THIS was an action for the non-delivery of twenty-six bales of twist pursuant to five contracts which had been entered into between the plaintiffs, who were partners, and one Egámbara Chetti deceased, of whom the defendant was executor. All the parties were Hindus.

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16 & 17.

On the 16th November 1860, Kesavalu Chetti, one of the plaintiffs, entered into three verbal contracts with the deceased for the purchase in all of fifteen bales of grey twist, five of which were to be at rupees 3-5-0 per bundle, and ten at rupees 3-5-6 per bundle. Five were to arrive by the *Bolden Lawn*, five by the *Sir Robert Sale*, and five by the *Trafalgar*. Kesavalu paid five rupees earnest in respect of these fifteen bales.

On the 23rd November 1860, Kesavalu entered into two verbal contracts with the deceased for the purchase in all of twelve bales of Turkey-red twist, at rupees 15-13-0 per double bundle. Six were to arrive by the *General Caulfield*, and six by the *Warren Hastings*. Kesavalu paid five rupees earnest in respect of these twelve bales.

(a) *Ex Relatione* Mr. Mayne.

(b) Present Scotland C. J. and Bittleston J.