APPELLATE JURISDICTION. (a)

Special Appeal No. 504 *of* 1861.

TANUVIÁAN and others.........................*Appellants.*

VALAGANÁDA and others..................*Respondents.*

Where no pattás and muchalkás have been exchanged between the parties, occupants of land cannot be sued for its proceeds, even though they have admitted the plaintiffs to be the proprietors.

1862. *September* 1. S. A. No. 504 *of* 1861.

THIS was a special appeal from the decree of J. H. Goldie, the Civil Judge of Tinnevelly, in Appeal Suit No. 124 of 1860. The original suit was instituted by the plaintiffs to establish their right to 3561 $\frac{9}{32}$ chains of punjey land and 29,480 palmyra-trees situated in the village of Kálváy, and to recover rupees 1,667-7-0, the value of the produce of the palmyra-trees from fasli 1266 to fasli 1268 (A. D. 1856 to 1858). The Civil Judge, finding that there was not sufficient evidence of the plaintiffs' title, dismissed their suit.

Sadagopacharlu for the appellants, the plaintiffs.

Mayne for the respondents the defendants, referred to Regulation XXX of 1802, sec. 6 and Regulation V. of 1822, sec. 9.

The following judgment was delivered.

We consider that the plaintiffs have established no legal claim against the defendants, and that it was proper that the suit should have been dismissed; but that the grounds upon which the Civil Judge has decided against the plaintiffs, are not those upon which he should have acted.

The Civil Judge has found that the defendants have acknowledged the plaintiffs as the proprietors of the land they occupy. The suit has been brought to recover from the defendants the proceeds of the land. These are designated damages, but in fact are rent. But as no pattás and muchalkás have been exchanged between the parties, such a claim, pursuant to section 6 of Regulation XXX of 1802 and section 9 of Regulation V of 1822, is not recoverable at law.

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

In declaring that the plaintiffs have no right at present to oust the defendants, the Civil Judge has gone beyond the requirements of the case, the plaintiffs not having sought to oust them.

With these observations we dismiss the special appeal with costs.

Appeal dismissed.

NOTE.—See S. *A. No.* 6 *of* 1847 Madras Sadr. Dec. 1851, p. 262; S. *A. No.* 58 *of* 1857 M. S. D. 1857, p. 145.

APPELLATE JURISDICTION. (*a*).

Criminal Petition No. 40 *of* 1862.

THE QUEEN *against* VAIYÁPURI GAUNDAN.

A Sessions Judge is bound to allow a prisoner whose conviction he has confirmed to execute a vákálat-náma to appeal.

1862. *September* 3. *Crim. P. No.* 40 *of* 1862.

IN this case it was alleged that J. W. Cherry, the Sessions Judge of Salem, had refused to allow a prisoner whose conviction he had confirmed, to execute a vakláat-náma to appeal, on the ground that no appeal lay against his decision under section 428 of the Criminal Procedure Code. That section enacts that " except as provided in section 405 of this Act, sentences and orders passed by an Appellate Court upon appeal shall be final."

Mayne for the prisoner.

PER CURIAM :—This was not a point which the Judge could decide. Let him allow the vakálat-náma to be executed and attested. (*b*)

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

(*b*) *Ex relatione* Mr. Mayne. The allegation of the refusal turned out to be erroneous.