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the Act, and as the causes of action which have given rise to the claim are rightly joined, the entire amount of it is the proper criterion of the Courts's jurisdiction.

For these reasons we are of opinion that the suit is within the jurisdiction of the Small Cause Court.

Appellate Jurisdiction. (*a*)

Civil Miscellaneous Petition No. 96 of 1870.

MADAI THALAVOY KUMMARASAMY MUDALIYAR and 2 others..... } *Petitioners.*

NALLAKANNU TEVAN and 31 others..*Counter-Petitioners.*

Certain land-holders applied to the Collector for warrants to be put into possession of lands under Section 41 of Madras Act VIII of 1865. The warrants were issued but certain ryots appealed under Section 43 by presenting ordinary petitions. In disposing of those petitions the Collector referred certain questions to arbitrators named by the parties and then made an order in accordance with the award. The Civil Court heard an appeal from the order.

Held, that the Civil Court had no jurisdiction to hear the appeal.

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APPLICATION under Section 35, Act XXIII of 1861, praying the High Court to set aside the decree of the Civil Court of Tinnevelly in Regular Appeal No. 187 of 1868, reversing the decision of the Subordinate Collector of Tinnevelly, in Original Suit No. 1 of 1867.

The petitioners presented petitions to the Collector stating that the counter-petitioners who raised Pisanam crops in the lands of Sivalapperi Puravu and Kammai Puravu, attached to their (petitioners') village of Idaikal, in Fusli 1276, did not pay the Kattuguthagai paddy according to the counterparts of leases given by them, and had allowed it to fall in arrear; that no property was forthcoming for attachment towards the realization of the arrears and that therefore the lands should be recovered from the ryots (the counter-petitioners) under Section 41, Act VIII of 1865.

49 warrants were issued to the Officer of the Police Station at Tenkasi for putting the lands in possession of the petitioner.

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

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The petitioners were put in possession of the lands of the 11 ryots who preferred no appeal within the time specified in the warrant. The other 38 ryots appealed; and on the 13th August, they put in application for copies of the petitions presented by the plaintiffs. On the 16th idem, they presented another petition denying their liability to pay any arrears to the petitioners. The ryots presented a third petition on the 5th September stating that the counterparts of leases produced by the plaintiffs where forged ones; that the ryots divided and gave the melvaram (landlords' share) for the lands cultivated by them during the Pisanam (season) in Fusli 1276, and that they have obtained receipts for the same.

Immediately on application for copies of the plaintiffs' petitions, orders were issued to the Tahsildar of Tenkasi directing him to stay execution of the warrants in the 38 cases in which appeals were preferred, to make enquiries at the place, and to submit a report. He submitted the result of his enquiries.

The Sub-Collector heard the appeal. Both the parties having named their arbitrators, he referred the case for arbitration.

The opinion of the arbitrators was required on three points:—

1st. Whether leases and counterparts thereof have been passed between the respondents and the ryots so as to render the respondents competent to have the benefit of the summary proceedings under Act VIII of 1865, or whether they have dispensed with such documents as being unnecessary.

2nd. Whether the ryots have really failed to pay the Kattuguthagai paddy and allowed it to fall in arrear, and

3rd. If it were so due, whether any attachment was made for the realization thereof, and whether it had no effect.

The decision of the arbitrators was in favor of the petitioners.

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The Sub-Collector's decision was as follows:—

In this suit three issues were submitted to the arbitrators.—1st. Whether puttahs and muchilkahs have been exchanged or mutually dispensed with between plaintiffs and defendants so as to enable defendants to apply for warrants of ejectment under Section 41 of this Act. 2nd. Whether the plaintiffs have or have not paid the melvarum for Fusli 1276 to defendants. 3rd. Whether there is sufficient property on premises of plaintiffs to cover the amount of arrears alleged to be due.

With regard to the 1st issue, the arbitrators find from the evidence of the Kurnum and other parties that muchilkahs were given by the plaintiffs to defendants.

With regard to the 2nd issue, the arbitrators find that plaintiffs have not paid the melvarum for Fusli 1276 to defendants, and that the receipts produced have in all probability been fabricated for the purpose.

With regard to the 3rd issue, the arbitrators find that no sufficient property was found on the premises of plaintiffs to cover the amount of arrears alleged to be due.

From these findings it follows as a matter of course that the warrants of ejectment previously applied for by defendants, granted to them, and suspended on the filing of this suit, ought to be now carried out.

The arbitrators have entered into another point, namely, whether, according to custom, the landlords have the power of ejecting their tenants or not. This point was not submitted to them for award. They have, however, decided in favor of the landlords (defendants), so the award is not affected by it.

In accordance with Sections 324 and 325 of Act VIII of 1859, judgment in this case will be deferred for ten days.

The counter-petitioners appealed against the decision of the Sub-Collector.

The Civil Court passed the following decree:—The Sub-Collector's decree is reversed, and he will take each ryot's

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case up *de novo*. The costs and damages, if any, will be decided by him on hearing the different suits.

The following is taken from the Judgment of the Civil Judge:—

This is a decision of the Acting Sub-Collector in which three separate landlords under Section 13 are joined together as plaintiffs and 38 different separate ryots jumbled together as defendants. It is utterly impossible to give a just decree in such an improper conjuction of parties as is here displayed. One of the defendants might be very differently circumstanced from another.

The case was as follows:—The landlords under Section 41 ejected their tenants, and 38 of those tenants appealed under Section 43 pleading that they had paid what was due and denying the agreement produced by the landlord.

The Sub-Collector then referred all parties to arbitrators, but acted in accordance with the provisions of the old Acts, not one of the provisions of Chapter 6 of the Civil Procedure Code being complied with as required by Section 74 of this Act.

In fact the whole proceedings are entirely unsatisfactory and illegal, much more so as it was entirely the Acting Sub-Collector's fault, and not the fault of the ryots who each put in a separate plaint. The present decree therefore is reversed, and the Sub-Collector will take each case up *de novo*. The case is one of great importance, as it appears to be allowed that the ryots have occupation rights, and therefore ejectment is a serious matter. The ryot is in each case the plaintiff, the ejecting party being the defendant, and it is to be remembered that the landlords in this case are landlords under Section 13 and not under 3.

The plaintiffs appealed to the High Court against the decree of the Civil Court on the ground, among others, that the Civil Court acted without jurisdiction in this case.

Srinivasa Charyiar, for the petitioners.

Kuppuramasamy Sastry, for the 20th counter-petitioner.

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The Court delivered the following

JUDGMENT:—In this case certain landholders applied to the Collector for warrants to be put into possession of lands under Section 41, Madras Act VIII of 1865. The warrants were issued, but some of the ryots appealed under Section 43 by presenting ordinary petitions. In disposing of those petitions, the Collector referred certain questions to arbitrators named by the parties and then made an order in accordance with their award. The Civil Court has heard an appeal from this order. It is quite clear that Section 69 gives the Civil Court jurisdiction to hear a Regular Appeal only when there has been a Judgment by the Collector in a Summary Suit under the Act. Section 50 and the following Sections provide the procedure to be observed in Summary Suits before the Collector, and the proceedings taken in this instance under Sections 41 to 43 were not of the nature of a suit or governed by the procedure in Section 50 and following Sections. The landholder is entitled on application to the issue of a warrant under Section 41 and that is a ministerial act of the Collector upon the production of the written statement required by the Section. The warrant is executed by the Police unless the ryot appeals to the Collector to show cause why the warrant should not be executed, and Section 44 contemplates that the execution of the warrant may be followed by a Civil Suit to reverse the delivery of possession. Clearly, therefore, the Collector had on this occasion no summary suit before him, he was merely executing a special summary remedy given to the landholder against the ryot for non-payment of rent and that was petitioned against. That the Subordinate Collector has in the present instance chosen to designate his proceedings a summary suit cannot of course constitute them as such. It was also of course open to the Collector in performing this as well as any other executive duty to refer any questions in dispute between the parties to arbitrators named by them.

The Civil Court therefore "in hearing the appeal exercised a jurisdiction not vested in it by law," and the case falls within Section 35, Act XXIII of 1861, though it cannot properly be disposed of by us as a Special Appeal. The

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record being before us, we think that it is our duty to proceed under Section 35, and we shall accordingly make an order setting aside the decision passed on Appeal by the Civil Court.

As is usual under this Section, we shall make no order as to costs.

Appellate Jurisdiction. (*a*)

Special Appeal No. 546 *of* 1868.

(*Civil Miscellaneous Petition No.* 154 *of* 1869.)

KOTTASAWMY, by his grandmother and guardian MUTTALANATCHIYARA *alias* VEERALUCHMI NATCHIYAR. } *Special Appellant* (*Plaintiff's heir.*)

SANDAMA NAIK, *Special Respondent* (*2nd Defendant.*)

In a suit before the Collector under Madras Act VIII of 1865 brought by a Zemindar to compel his tenants, the defendants, to accept a puttah at enhanced rates of assessment on the ground that he had at his own expense repaired a tank and rendered the land formerly cultivated as dry land capable of being cultivated as wet land.

Held, that the plaintiff could not maintain the suit inasmuch as he had not obtained the sanction of the Collector to raise the rent, and such a condition was a condition precedent to such a suit.

Semble: That the right of the plaintiff to recover was dependent on the further condition that an additional revenue was levied on him consequent upon the improvement made.

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THIS was a Special Appeal against the decree of the Civil Court of Madura in Regular Appeal, No. 112 of 1868, modifying the decision of the Acting Head Assistant Collector of Madura, in Original Suit No. 1095 of 1867.

The Original Suit was brought to compel defendant to accept a puttah and execute a muchilika.

Defendant stated that the rates specified in the puttah are in excess of the rates hitherto paid and are otherwise excessive.

The Acting Head Assistant Collector decreed for plaintiff.

The defendant appealed to the Civil Court.

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