

1871. refer to the Lower Appellate Court the issue whether the  
 ecember 8. title asserted by plaintiff is proved.  
 A. No. 440  
 of 1871.

It is, accordingly, hereby ordered that the foregoing  
 issue be, and the same hereby is, referred to the Lower Ap-  
 pellate Court for trial upon the evidence already recorded  
 in the suit ; the finding thereon to be returned to this Court  
 within three weeks from the date of receiving this order.  
*Issue referred.*

APPELLATE JURISDICTION. (a)

*Civil Mis. Regular Appeal No. 278 of 1870.*

ARABHI SESHACHELLAM APPA RAU, } *Appellants.*  
 and others.

RÁMAYA.....*Respondent.*

A petition of Regular Appeal was rejected by the Civil Court, be-  
 cause it did not state what amount of quit-rent was payable to  
 Government on the lands in dispute ; and, therefore, did not contain the  
 particulars required by the order of the High Court, dated 26th June  
 1867. *Held*, by the High Court, that the order of rejection was wrong.  
 The utmost which the old rules justified was the non-receiving.

1871.  
 umber 13.  
 M. R. A.  
 No. 278  
 of 1870.

THIS was an appeal against the order of J. G. Thomp-  
 son, the Civil Judge of Berhampore, dated the 7th  
 May 1870, passed on Mis. Petition No. 517 of 1870.

A petition of Regular Appeal against the decree of the  
 District Munsif of Chicacole, in Suit No. 373 of 1866, was  
 rejected by the Civil Court of Berhampore on the ground  
 that the amount of quit-rent payable to Government on the  
 lands in dispute in that suit was not stated. On the follow-  
 ing day the appellants made an application to be allowed  
 to amend, which was also rejected.

The appellants appealed against the order rejecting  
 this application.

*The Advocate-General*, for the appellants.

The Court delivered the following

(a) Present : Holloway and Innes & J. J.

JUDGMENT :—The petition of appeal against the decree of the District Munsif was rejected, because it did not contain the particulars required by the order of the High Court dated 26th June 1877. We think that the order of rejection was wrong.

1871.  
December 13.  
C. M. R. A.  
No. 218  
of 1870.

The utmost which the old rules justified was the non-receiving. The evil of the rejection is that the appeal is barred, while, if not received, the party might have produced it amended within the time.

APPELLATE JURISDICTION. (a)

*Regular Appeal No. 116 of 1870.*

R. RAGUNÁDA RAU.....Appellant.

NATHAMUNI THATHAMÁYYANGÁR.....Respondent.

Suit to recover damages from defendant, Deputy Magistrate of the zillah of Trichinopoly, for a trespass alleged to have been committed in execution of an order made by him under Section 311 of the Criminal Procedure Code, directing the demolition of the plaintiff's house as being a nuisance to a public thoroughfare. Defendant denied his liability, alleging in justification of his order that he believed the house to be obstructive to public comfort and proceeded in accordance with Sections 308, 310, and 311 of the Criminal Procedure Code, and that, having acted in good faith in discharge of his duties as a Magistrate he was protected by Act XVIII of 1850. The issues settled were (1) whether the house was an obstruction and nuisance within Section 308 of the Criminal Procedure Code : (2) whether the defendant acted in good faith in the discharge of his public duty in ordering the removal of the house : (3) whether the plaintiff was entitled to the amount of damages claimed. The Civil Judge held, upon the 1st issue, that the defendant had no jurisdiction to order the removal of the house : upon the 2nd issue, that defendant had not acted with due care and attention, but from feelings of personal animosity towards plaintiff, and was, therefore, not protected by Act XVIII of 1850. Upon the 3rd issue, he assessed the damages at Rupees 500. The defendant appealed relying mainly upon the objection that no action lay against him inasmuch as first, it had not been shown that he acted without jurisdiction in making the other complained of ; and secondly that even if he had acted without jurisdiction, he acted believing at the time in good faith that he had jurisdiction, and was, therefore, entitled to the protection given by Act XVIII of 1850. *Held*, upon the first point, that an entire absence of jurisdiction to make the order had been shown. Upon the second point, that the facts of the case furnished no reasonable or probable ground for belief in the existence of jurisdiction by a magistrate of ordinary qualifications : that the defendant must, therefore, be held not to have entertained that belief in good faith, unless the provisions of the Criminal Procedure Code, under which he acted, admit of the view that he might, not unreasonably, think that it was probably intended to apply to such an annoyance as that complained of. That, however, these

(a) Present : Scotland, C. J. and Holloway, J.