1871. *October* 27. *C. M. P. No.* 224 *of* 1871.

The right of appeal not existing, the Civil Court had no jurisdiction to entertain the appeal to that Court, and giving effect to the Petition of appeal as a Petition under Section 35 of Act XXIII of 1861, as we think in the circumstances of this case should be done, the order of that Court must be set aside. And following this Court's decision in 6, H. C. R., 22 (*Subraiya Gaundan* v. *Venkatagiri Aiyar and* 5 *others*), we are of opinion that under the jurisdiction given by the latter part of the section the invalid orders of the District Munsif should also be annulled. The effect of certificate perfecting his title. The parties will bear their own costs in this and the Lower Courts.

APPELLAE JURISDICTION (*a*)

Referred Case No. 39 *of* 1871.

G. L. MORRIS, ESQ., Receiver and manager of the Tanjore Estate *against* MUTHUSÁMI PILLAI, and another.

The suit was brought by the plaintiff, a Receiver of the Tanjore Estate, to recover from the 1st defendant, a farmer, a sum of money alleged to be rent due to the Tanjore estate under a written agreement executed in August 1866 by the 1st defendant to the 2nd defendant who then claimed to be owner of the estate. The Judge of the Court of Small Causes considered that the subject- matter of the plaint did not constitute a cause of action to the plaintiff, and dismissed the plaint subject to the opinion of the High Court. *Held*, that the suit was maintainable by the Receiver to recover the fair rent payable for the use and occupation of the land under the Muchalka, which was good evidence of what was the fair amount of rent. The 2nd defendant having been held to possess no title to the property could not afterwards maintain an action for the non-payment of the rent of a portion of such property, due according to the terms of the Muchalka.

Held, also, that the right of suit did not extend to recover anything as interest on the rent due.

1871. *November* 8. *R. C. No.* 39 *of* 1871.

THIS was a case referred for the opinion of the High Court by J. H. Nelson, the Judge of the Court of Small Causes at Combaconum.

The following was the case stated,—

"This is a suit brought for the recovery from the 1st defendant, a farmer, of Rs. 61-15-1, being the balance of a sum of money alleged to be due to the Tanjore estate under a written agreement, dated 20th August 1866. The plaintiff is G. L. Morris, Esquire, the Collector of the Tanjore District,

(*a*) present: Scotland, C. J. and Innes, J.

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and he sues as being the appointed Receiver for the Tanjore estate. The written agreement purports to have been executed in favor of the 2nd defendant, who is styled in the same His Royal Highness (Divanum Averghal) Maharája Rája Sri Sarab'hoji Sahib, and who at the time of its execution appears to have claimed to be the adopted son of the late Rája of Tanjore, and as such to be the sole owner and exclusive possessor of the Tanjore estate. And it is stated in the plaint that the 2nd defendant is made a co-defendant as being a 'name-lender.'

The plaint was presented on the 27th May 1869, and in December of the same year was brought before me for scrutiny previous to registration. And upon consideration came to the conclusion that the subject-matter of the plaint did not constitute a cause of action to the plaintiff, and rejected the plaint under Section 32 of the Code of Civil Procedure.

Subsequently, on the 8th October 1870, the plaintiff's successor in the office of Receiver presented an application for the review of my order rejecting his predecessor's plaint, and in doing so called my attention to the following passage in the Judgment of the High Court in Regular Appeal No. 93 of 1870, which comments on the mode in which I dealt with a suit similar to the present, in which the Receiver wished to intervene and recover the whole sum claimed by the plaintiff in that suit, who is the 2nd defendant in this suit. The passage is as follows :—"The fact is that Surfogi whose title to the land had been set aside by the decree of this Court, had been suing upon a contract with defendant and his suit had been dismissed. If the time of the currency of that suit is deducted, the action is in time. The Small Causes Court Judge refused to admit the plaintiff in place of Surfogi, although he had manifestly taken all interest in the land as representing the persons for whom he was Receiver. It seems to me that it was quite open to the present plaintiff at his election either to affirm or disaffirm Surfogi's contract, and that, having elected to confirm it, he should have been admitted into the suit. Then, however, comes the dilemma :—Coming in as successor to Surfogi and suing

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upon the obligation created by his contract, the plaintiff is barred by *res judicata*. Coming in paramount to him and upon a discordant title, Surfogi's proceedings were no interruption of the period of limitation, because then Surfogi is not the person under whom he claims. It is very melancholy that substantial justice should be defeated by supra-subtile procedure, and specially in Small Cause Courts, in which such mischievous devices are peculiarly mischievous. If the plaintiff had asked that a case be stated, and it had been stated, doubtless the result would have been different."

Upon reading this passage it seemed to me that it was my duty to admit the petition for review, and re-consider my order.

Accordingly I have re-considered my order, and after hearing what the plaintiff's pleader had to urge in support of his case, and after perusing and construing the order of the Civil Court appointing the Receiver, and the decree of the High Court in *H. H. M. Jijoyiamba Bayi Saiba and another* v. *H. H. M. Kamakshi Bayi Saiba and* 12 *others*,(a) I have come to the conclusion that my order rejecting the plaint was a right and legally proper order, and that the plaint must be rejected under Section 32 of the Code of Civil Procedure, because the subject-matter of the plaint does not constitute a cause of action to the plaintiff, subject to the decision of the High Court upon the following case :—

The suit is brought to recover damages on account of the violation by the 1st defendant of a legal obligation incurred by the 1st defendant through making a convention with the 2nd defendant on the 20th August 1866. By the terms of that convention the 1st defendant was obliged to pay to the 2nd defendant a certain sum of money on or before a certain date. The suit is brought not by the 2nd defendant but by the plaintiff, as being the appointed "Receiver" of the Tanjore estate.

The following is a translation of the plaint :—"Under a Muchalka, dated the 20th August 1866, the 1st defendant rented for 3 faslis, from fasli 1275 to 1277, 16 mahs of Punjei and Swarnadáyam land of the Vadapáthi Padugai, in the Mokhása village of SundaraPerumál Covil, and fruit

(a) 3 M. H. C. R., 424.

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trees belonging to the deceased Máhárája of Tanjore, and agreed to give an annual rent of Rs. 81-15-1, the sum due for fasli 1275 being payable on or before the 30th August 1866, and in default interest being chargeable at Rupee 1 per mensem. The Muchalka has been executed by the 1st defendant to the 2nd, the then manager appointed by Kámákshi Bayi Saiba. The 1st defendant accordingly enjoyed the land, but paid only part and not the whole of the rent due for fasli 1275, as hereinunder specified, viz. :— Balance due, Rs. 61-15-1. As the Muchalka has been executed on behalf of the estate of which I, as stated above, am the Receiver, I bring the suit to recover from the 1st defendant the abovementioned amount with interest and costs. The Muchalka being in the name of the 2nd defendant he is also made a defendant."

According to the plaint the 2nd defendant was a mere 'name lender' in the transaction evidenced by the instrument sued on, and lent his name as obligee because he was at the time "managing" the Tanjore estate. But according to the written statements made by the senior of the late Rája's widows, and of the 2nd defendant, respectively, put into the Tanjore Civil Court in the course of O. C. No. 16 of 1866, and reported at 3, M. H. C. R., 426, the 2nd defendant was duly adopted as the son of the late Rája on the 1st July 1863, and the whole property was shortly afterwards put in his possession, and he was in 1864 the only party entitled to the property, both under the Hindu Law and because the senior widow being the owner, if the pretender was not, had assigned to him all that was in her. And therefore it was as *owner* of the Tanjore estate, not as *manager*, that the 2nd defendant made the convention aforesaid with the 1st defendant. The following is a translation of the first part of the instrument sued on :—"Muchalka executed by Muthusámi Pillai to His Royal Highness Máhárája Rája Sri Sarabhoji Sahib before Tiruvenkata Pillai, Agent. I, one of the 4 persons that rented the Punjei lands and fruit trees in the western portion of Vadapáthi Padugai in the village of Sundara Perumál Covil, under a Muchalka, dated the 17th August 1865, having undertaken to pay for my

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share of the land (16 mahs) and fruit trees (18 in number) Rs. 81-2-3 and As. 12-10 respectively, for 3 faslis from the beginning of fasli 1275 to the end of 1277, and having accordingly cultivated the land and enjoyed it for fasli 1275, agree to pay the rent due for that fasli, namely, Rs 81-15-1 to the karnam on or before the 30th August of fasli 1276, and obtain the printed katchats issued by the Palace authorities."

The rest of the instrument consists of numerous provisions, and contains nothing from which it can be pretended that the second defendant was dealing with the 1st defendant in any capacity other than that of absolute owner and possessor.

In execution of the decree passed in the suit above referred to, the Civil Court of Tanjore appointed the plaintiff "Receiver" of the Tanjore estate by the following instrument :—

Original Suit No. 16 *of* 1866.

"Whereas it has been shown to the satisfaction of the Court that the undermentioned property in dispute in the above suit is being wasted and misapplied by the 1st and 14th defendants, you are hereby appointed Receiver of the said property. You shall diligently and faithfully discharge the trust committed to you and act, in every respect, according to the instructions given you, and to the best of your judgment, for the preservation and improvement of the property, and for the interest of the parties concerned. You are hereby empowered to *collect* the rents and profits thereof, and to *apply and dispose* of the same in such manner as the Court shall, from time to time, direct. You shall *render a true and just account* of whatever may be *received* by you, and also quarterly accounts in abstract. You shall derive no personal advantage whatever, directly or indirectly, and you shall exercise the powers of *Receiver* until otherwise ordered by this Court."

By virtue of this instrument the plaintiff as "Receiver" took possession of the Tanjore estate, and proceeded to col-

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lect the rents and profits thereof, and to apply and dispose of the same.

On the 8th May 1868, the High Court passed a decree, on appeal from the decree passed in the suit above referred to, and thereby directed the permanent appointment of a "*Receiver and Manager*" of the whole of the property, and that "if practicable the Collector be continued as such Receiver and Manager." And the plaintiff appears to have acted thenceforth as such 'Receiver and Manager' accordingly.

By the same decree certain necessary powers were conferred on the plaintiff in the following terms :—" And the said Receiver and Manager is empowered and directed in accordance with the judgment of this Court and subject to the control of the Civil Court to do all acts and things necessary or proper for the preservation and beneficial management of both the immoveable and moveable property and the collecting of the rents, produce and profits of the same, including the appointments of all Agents and servants for those purposes: as also all proper acts and things for the purpose of affording to the said widows respectively a fair participation in the use and enjoyment of the moveable property. And he is further empowered to discontinue such parts of the present Palace establishment as are not required for the convenience or comfort of the said widows, or not suited to their condition and circumstances."

The Receiver and Manager was further empowered to allow certain sums to each of the widows out of the rents and profits, and to do certain other things.

On the 10th and 14th September 1868, respectively, the Civil Judge of Tanjore, in answer to letters from the Receiver and Manager, wrote two letters giving and extra-judicial opinion on certain matters, and declining to give any opinion on the doubtful point whether the Receiver and Manager was or was not empowered to continue proceedings commenced by and in the name of the Pretender, as the point would probably come before the Civil Court for decision on appeal.

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Upon the foregoing facts I was of opinion—(1) That by virtue of the convention evidenced by the instrument sued on, a *jus in personam* as against the 1st defendant accrued to the 2nd defendant for his own proper benefit; (2) that that right was never relinquished by, transferred from, or extinguished in the 2nd defendant; (3) that the right owners of the Tanjore estate, collectively and individually, have had and have no *jus in personam* as against the 1st defendant by virtue of the convention evidenced by the instrument sued on, or otherwise, to oblige him to pay them money for the occupancy of lands in fasli 1275; and (4) that the plaintiff as 'Receiver', or 'Receiver and Manager' of the Tanjore estate, is not empowered to bring suits generally and the present suit in particular.

The questions for the consideration of the High Court are—

(1.) Whether, assuming as a matter of fact that the 2nd defendant accepted on his own account and as owner of the Tanjore estate, and not as agent for another, the promise of the 1st defendant to pay money to the 2nd defendant as the hire of the lands specified in the plaint, and assuming that the 2nd defendant fulfilled the promise or promises which he made in return to the 1st defendant, a right did not accrue to the 2nd defendant, absolutely and in his individual capacity, to demand and enforce payment to himself by the 1st defendant of the sum promised.

(2.) Whether the decree of the High Court above mentioned has in effect extinguished, or transferred to another, or in any way affected the above right of the 2nd defendant.

(3.) Whether the right owners of the Tanjore estate can now treat the 2nd defendant as their agent, for the purpose of adopting as their own a pact entered into by the 2nd defendant whilst he was in adverse and exclusive possession of the Tanjore estate.

(4.) Whether the 'Receiver (and Manager)' of the Tanjore estate is empowered by the order of the Civil Court appointing him 'Receiver' and the decree of the High Court confirming and limiting his appointment as Receiver and

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Manager,' or by either the order or the decree, to sue and be sued, either with or without leave obtained from the Civil Court of Tanjore, in behalf of the right owners of the Tanjore estate.

(5.) Whether the plaintiff was empowered by the order and decree, or by either, to bring the present suit, being a a suit not for the recovery of rent accruing due during the term of the duration of his office, but for the recovery of money due to the 2nd defendant before the 'Receiver and Manager' was appointed."

No counsel were instructed.

The Court delivered the following.

JUDGMENT:—As regards the first question submitted in this case, it is quite clear that the 2nd defendant, having been held possess no title to the property, could not afterwards maintain an action for the non-payment of the rent of a portion of such property according to the terms of the Muchalka. The right to the property and the right to the rents payable by the tenants occupying portions of it are inseparable.

As to the other questions submitted, the decision of this Court in *Small Cause Referred Case No.* 55 *of* 1869, *and in Regular Appeal No.* 93 *of* 1870, 6, M. H. C. Rep., 125, referred to by the learned Judge, are in point, and following, those decisions we hold that the suit is maintainable by the Receiver to recover the fair rent payable for the use and occupation of the land under the Muchalka, which is good evidence of what is the fair amount of rent.

No question of agency arises in the case. The Receiver, representing the rightful owners of the estate, is empowered by his appointment under the decree of this Court to sue for the rents accrued and accruing due from the several tenants who have been holding portions of the property belonging all along to the persons who have been pronounced by the decree of this Court to be the rightful owners. But we are of opinion that the right of suit does not extend to recover anything as interest on the rent due. These observations afford an answer to all the questions submitted.