1871. *February* 14. *S. A. No.* 575 *of* 1869.

INNES, J.—I think it is doubtful on the document whether the intention of the karnavan was not entirely to transfer his rights as karnavan. If it were not so, the document is merely a power of attorney, and the authority conveyed by it is revocable. If on the other hand the intention of the karnavan, as expressed by the document, were to transfer his rights absolutely, it would be, I apprehend, an invalid instrument. A man cannot assign obligations (*i. e.*, cannot substitute some one else as the performer of his duties) without the consent or authority of those to whom the duties are owing, and whereas, in the present case, rights are coexistent with and inseparable from obligations, so that the assignment of the one cannot be effected without the assignment of the other, there can be no valid transfer of rights without the consent and authority of those interested in the performance of the obligations.

I concur, therefore, in dismissing this Special Appeal and with costs.

Appeal dismissed.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 362 *of* 1869.

THIAGARÁJA MUDALI..... .....*Special Appellant.*
RAMANUJA CHARRY and others.....*Special Respondents.*

Special Appeal No. 284 *of* 1870.

CHINNASÁMI CHETTI..... ... *Special Appellant.*
NANJAPPASARY and others.....*Special Respondents.*

Regular Appeal No. 69 *of* 1870.

JUNJLA VENKATARÁYADU.....*Appellant.*
JUNJLA KAMAMMAH and another .....*Respondents.*

The valuation of the matters of litigation for the purpose of determining the jurisdiction of Munsifs is to be made in the mode prescribed by Sec. 11, Regulation VI of 1816 and Regulation III of 1833 and not in that prescribed in the Stamp Acts.

1871. *March* 20. *S. A. No.* 362 *of* 1869. *S. A. No.* 284 *of* 1870. *R. A. No.* 69 *of* 1870.

THE question referred from these appeals for the decision of the full Court, was whether the value of a suit for the purpose of ascertaining the jurisdiction of the District Munsif's Court should be estimated on the amount of the annual produce of the land in dispute, under Section 11, Regulation

(*a*) Present Holloway, Innes and Kindersley, JJ.

1871. *March* 20. S. A. No. 362 *of* 1869. S. A. No. 234 *of* 1870. R. A. No. 69 *of* 1870.

VI of 1816, in the manner provided by Regulation III of 1802, or on the value stated in the plaint as required by the Stamp Act.

The *Acting Advocate General* and *Sloan* contended that the value for the purposes of jurisdiction is to be calculated according to the mode prescribed in the Regulations VI of 1816 and III of 1833.

Sanjiva Rau contended that the valuation arrived at by the mode prescribed by the Stamp Acts was to be taken to be the valuation for the purpose of determining jurisdiction.

The arguments of Counsel, and the Regulations and Acts cited, sufficiently appear in the following judgments :—

HOLLOWAY, J.—The question is whether the valuation of the matters of litigation for the purpose of determining the jurisdiction of Munsifs is to be made in the mode prescribed by Section 11, Regulation VI of 1816, and Regulation III of 1833, or in that prescribed by the long array of recent Stamp Acts. More precisely stated the question really is, are we to retain the limitation contained in those Regulations as to the compass of the jurisdiction, but alter the mode of calculation by which the amount governing that compass is to be arrived at ? We should thus be retaining the Regulations as to the limit of the jurisdiction, but altering their entire scope by varying the mode of calculation. I freely confess that but for a dissenting opinion to which no man attaches more weight than I do, the question would be to me free from difficulty. These two Regulations are unrepealed expressly, and the question is whether they have been so impliedly. They are Regulations dealing with a special matter, and their implied repeal by any subsequent Act, general in its scope, would be matter of great difficulty.

I will state the rule as to implied repeal as laid down by a great authority, and the statement will be found to be in accordance with many, if not most of the English cases. "There is a tacit repeal of an earlier law by a later when "the new embodies upon the same object matter a new

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"determination which contradicts that embodied in the "old." *Unger* I, 130. It appears to me that the object of the one Act is to determine jurisdiction, and that of the other to determine fiscal consequences, and that these have no necessary, but merely an accidental, connection. The Regulation deals with annual value and the Stamp Act with market valne, and, to determine what is annual valne, we must still look to the construction which the Regulation has acquired. If itself unrepealed, the fact that it has acquired that construction from a Regulation which has itself been repealed will not prevent the continuance of the old construction, unless the repealing Act, or some subsequent Act, has put upon the words a new construction inconsistent with the old one, and so put is as to require the substitution of the new one for the old. Now, upon annual produce, the Act has put no construction at all. It seems to me clear, therefore, that the old Regulation subsists as it did before, and being the only Regulation determining the jurisdiction, the question of jurisdiction is to be settled exactly as it would have been if the Stamp Acts had not been passed. I do not at all mean to imply that this special Regulation could have been repealed by a general Act, but I am clear that if it could be, it has not been.

The Stamp Acts have really remedied a strange inequality of the old law, which assessed the stamp as to all property except real property upon the actual value.

If I could think that the Stamp Act had any necessary connexion with jurisdiction of Munsifs, it would appear to me more natural to embody in the old Regulation the sum increased according to the new calculation, which would then, according to the intention of the Regulation, be the sum which was to measure the jurisdiction, and this would leave matters exactly as they were before. The true construction, in my opinion, is that the calculation for the purpose of the stamp is by one mode of calculation, and that for the purpose of the jurisdiction by another. Within Section 5 of the Procedure Code, I am of opinion that Regulation VI of 1816, with its acquired interpretation, is the law in force for determining the jurisdiction of Munsifs.

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INNES, J.—In consequence of a difference of opinion between the Chief Justice and myself, before whom Special Appeal No. 362 of 1869 was heard, the question in this and two other cases has been referred for the opinion of the full Court. The question which we have to decide in Suit 362 is, whether the pecuniary jurisdiction should have been determined by the value ascertained according to the provisions of the Stamp Law XXXVI of 1860, and the question in the order two suits is the same in principle, the Stamp Law applicable being Act XXVI of 1867 as the value for jurisdiction. To determine it, it is desirable to see what the course of the legislation bearing on the subject has been. By Section 3, Regulation III of 1802, the Courts of Adálat, established in the reveral zillahs, were required to state precisely the matter of the complaint, and, in suits for land, to set out the amount of the annual produce. The section lays down the mode in which the annual produce is to be calculated, and in suits other than for land directs that the exact sum of money or amount of damages be stated. By Section 2, Regulation XII of 1809, the jurisdiction of the Zillah Courts became limited to claims to land paying revenue to Government, of which the annual produce, computed according to Section 3, Regulation III of 1802, was 5,000 Rupees in value, and claims to lakhiráj land, of which the annual produce was 500 Rupees. The pecuniary limit in other suits was to be determined by the computed value, or the amount of the subject-matter of the claim.

As the meaning of the words 'annual produce' had been expressly defined by Section 3, Regulation III of 1802, and in the enactments passed since that Regulation no different meaning had been assigned to them, it would be a fair conclusion that, in the computation of the annual produce in the case of lakhiráj equally with malguzári land, the provision of Section 3, Regulation III of 1802, were intended to be the guide.

It is true that the express reference to Section 3, Regulation III of 1802, as appplicable to the case of malguzári lands, and the omission of such reference in the sentence immediately following in respect of the other, may seem to

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pply that the application of the rule contained in Section 3, egulation III of 1802, was intended to be limited to the mputation of the annual produce in suits for malguzari nds. But there seems to be no reason for any distinction ing made, and, looking at the object of Section 2, Regula- on XII of 1809, which was to limit a jurisdiction which ad hitherto been unlimited, I think that the important lords are those which fix the pecuniary limit, and that the ference to Section 3 is merely parenthetical, and intended point out generally the particular enactment in which the rds 'annual produce' are explained in the sense in which ey are intended to be used by the Legislature *throughout e Section*, and that they should be read, therefore, as ap- ying to lakhiráj as well as to malguzári lands. And I link it will appear that the subsequent legislation in mak- g no such distinction supports this view. Nor does the le contained in Section 2, Regulation XII of 1809, for the mputation of the pecuniary limit in other suits, differ aterially from that laid down in Section 3, Regulation III f 1802, for computing the value to be stated in the plaint.

In fact, Section 2, Regulation XII of 1809, partly by ference and partly by the use of similar though less precise ngnage, appears to adopt in their entirely (as a basis for termining the amount or value upon which the jurisdiction to depend) the rules laid down by Section 3, Regulation of 1802.

In 1808, Regulation V was passed, establishing *ad-lorem* institution fees on suits. In the valuation of lands, e fees were to be calculated on the annual produce of lguzári, and ten times annual produce of lakhiráj. In ch instance the computation is to be made according to ction 3, Regulation III of 1802. In suits for money or e value of personal property, *on the amount or value*, d in suits for houses, tanks, grounds, or other real proper- not being malguzári or lakhiráj land, on the estimated lue. This Regulation was followed by Regulation XVII of 08, which repealed it, and re-enacted substantially, in Sec- on 6, the same provisions as to the basis of computation of e duty payable in suits.

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Regulation XVII of 1816 was the next Stamp Act. I prescribes *ad valorem* duties for suits, and, in Sections 13 an 14, follows the previous stamp and fees enactments, in makin the annual produce in suits for malguzári, and ten times t annual produce in suits for lakhiráj, land, and in other suit the estimated value (calculated according to Section 3, Re gulation III of 1802), the basis of calculation of the value o the claim for stamp purposes. By Section 31 of this Regu lation, the Courts of the District Munsifs which were estab lished by Regulation VI of 1816 were exempted from it operations. This was the last Stamp Act passed prior t the creation of the Principal Sadr Amins' Courts in 1827 and it seems clear that, so far, the valuation of suits fo stamp purposes had not determined the valuation for juris diction, but that in suits for land paying revenue to Govern ment, the value for stamp purposes and the value for juris diction were both determined by the value of the annua produce ; while in suits for lakhiráj land, the value of th annual produce determined the pecuniary jurisdiction and o ten times that produce the amount of stamp payable By Regulation VII of 1827, the Courts of the Principal Sadr Amins were established. They were then called Courts of Native Judges. Section 5 makes applicable to them the provisions of Sections 5 and 9 of Regulation I of 1827.

Now, by Regulation I of 1827, certain Courts calle Courts of Assistant Judges had been created, and by Sec tions 5 and 9 of that Regulation, those Courts are veste with the jurisdiction and functions of the Courts of the Zil lah Judges, and made subject to the same rules of procedur Section 9 declares that all the provisions of the Regulation which are now in force, or may hereafter be enacted for th guidance of the Zillah Judges in their proceedings and de cisions, &c., &c., "shall, as far as consistent with this Regula tion, be applicable to Assistant Judges appointed under th Regulation." This amounts to an incorporation into thi Regulation of all such enactments as were then in existenc applicable to Zillah Judges and not repugnant to the lette or spirit of this Regulation. Thus, by Section 5 of Regula tion VII of 1827, the Courts of the Native Judges (after wards by Act VII of 1843 styled Principal Sadr Amins) were

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"the *value of the property* shall be assumed at the amount "of the annual aggregate produce of the land computed as "payable by the dependent talukdárs, under-farmers and "ryots on account of the year in which the suit may be "preferred," *i. e.*, at the amount of annual produce, as calculated according to the rule in Regulation III of 1802, which had been adopted in Regulation XIII of 1816, and as to other suits (except in the case of claims to lakhiráj lands), the provisions of the enactment are substantially, though in more precise language, the same as the rules in Regulation III of 1802, but in regard to lakhiráj lands a new rule is introduced. It runs as follows :—

"In suits for lakhiráj inám or rent-free lands, the "value shall be calculated at 18 times the rent payable by "the ryots or other under-tenants of the land."

Then came Act X of 1862, which, in regard to suits for land, re-enacted in its Schedule B the same rules as those to be found in Act XXXVI of 1860.

Prior, however, to the enactment of Act X of 1862, Section 3, Regulation III of 1802 had been expressly repealed by Act X of 1861. But, as before observed, the rule contained in Section 2, Regulation XII of 1809, postulates a reference to Section 3, Regulation III of 1802. And the words of Section 9, Regulation I of 1827, are wide enough to embrace the provisions of Section 2, Regulation XII of 1809, and this rule, as explained already, was by Section 5, Regulation VII of 1827, made applicable to the Courts of the Principal Sadr Amins. Now both these sections in these two Regulations have been rescinded by Act X of 1861 "so far as relates to suits and proceedings under Act VIII of 1859," and there arises, therefore a question whether this rescission extends to the mode of computation hitherto in use for determining whether a suit was within the jurisdiction. I am of opinion that it does not. I take it that what is meant by "so far as relates to suits and proceedings under Act VIII of 1859" is to be interpreted "so far as the rescinded section renders applicable to the Courts of the Principal Sadr Amins, rules of procedure which have been superseded by Act VIII of 1859, or so far as relates

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to proceedings which may now be taken under Act VIII of 1859, in supersession of the former procedure."

Now Act VIII of 1859 contains no rules for determining whether a suit is or is not within the pecuniary limit prescribed by law, and it seems to me, therefore, that Act X of 1861 did not in this respect work a repeal of this section.

But Regulation XII of 1809 also was repealed by Act X of 1861, so that, unless the rules it contains still survived in Regulations I and VII of 1827 at the date at which Act X of 1862 (Stamp Act), came into operation, the Courts of the Principal Sadr Amins would be without any express rule as to the mode of ascertaining whether a suit was beyond the pecuniary limits of their jurisdiction, and it might then be inferrible that the Legislature, in laying down a mode of valuation of a claim for stamp purposes, intended that it should be adopted as the mode of valuation of claims for other purposes, for which the mode of valuation previously prescribed by law had ceased to exist. Is the effect, therefore, of Sections 5 and 9, Regulation I of 1827, and Section 5 of Regulation VII of 1827, such as to preserve to the Courts of the Principal Sadr Amins the provisions of Section 2, Regulation XII of 1809, notwithstanding the repeal of that Regulation by Act X of 1861 ?

I think that *Reg.* v. *Inhabitants of Merionethshire* (13 L. J., (N.S.) M. C., 158, and 6 Q.B.,343)seems an authority in point. Section 2, Regulation XII of 1809, was enacted with reference to the functions of Zillah Judges, and it was afterwards made applicable, with other Regulations, to a different class of Judges, called now Principal Sadr Amins. The enactment so making it applicable must, from its language, be regarded as incorporating with it, in reference to Principal Sadr Amins, all the provisions of the law (this included) relating to Zillah Judges, except such as are expressly excepted. And this being so the provisions of Section 2, Regulation XII of 1809, relating to the Courts of Zillah Judges, must be held to have still been surviving to the Courts of the Principal Sadr Amins, as part of Regulation VII of 1827, at the date of the enactment of Act X of 1862.

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Then, in regard to the District Munsifs, Section 11, Regulation VI of 1816, was still unrepealed, and must be held to have been in force at the date of the institution of this suit. Unless, therefore, the provisions of Section 2, Regulation XII of 1809 (as surviving in Section 5, Regulation VII of 1827), and Section 11, Regulation VI of 1816, can be considered as having been virtually superseded by the Stamp Act XXXVI of 1860, it seems to me that we must hold that the Courts of limited jurisdiction of the Principal Sadr Amins and District Munsifs are still to be guided in determining the limit of their jurisdiction by the law which was in force prior to and at the date of Act XXXVI of 1860.

The question cannot arise in cases falling to be valued for stamp by Act XXXVI of 1860 *in respect to malguzari lands*, since the annual produce for one year determines both the limit of the jurisdiction and the value of the stamp. The only kind of property as to which the question may directly arises under Act XXXVI of 1860 is lakhiráj land.

By the rules for determining the pecuniary jurisdiction as to such land which were in force as to the Courts of the District Munsifs and Principal Sadr Amins at the date of Act XXXVI of 1860 coming into operation, we must look to the *annual produce*. If the annual produce is in value above a certain amount, the jurisdiction is gone, whatever may be the value of the *claim*. The Stamp Act provides for certain *ad valorem* charges on claims, and then goes on to say how claims are to be valued. In lakhiraj suits the value is to be 18 times the annual produce determines the pugnancy. The value of the annual produce determines the jurisdiction—18 times the annual produce determines the value for stamp purposes. Looking also at Act XXXVI of 1860 throughout, I can see in it no other purpose or object than to provide a stamp revenue, and I think that had there been any such object as that of substituting a rule, the tendency of which would necessarily be to narrow, in respect to one class of land at least, the jurisdiction of those Courts before which the Principal litigation of the country comes, something to that effect would have been clearly and unmistakeably expressed.

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There is nothing of the kind in Act XXXVI of 1860, nor is there in this nor in the subsequent enactments, Act X of 1862, Act XXVI of 1867 and Act VII of 1870, anything to suggest that Act XXXVI of 1860 was enacted for any other than stamp purposes. Section 32 of Act X of 1862 seems to point clearly to the levying of stamp duty as the exclusive purposes of that Act, and the language of note *a*, Section 11 of the schedule to Act XXXVI of 1867, "The amount of stamp duty payable shall be computed," &c., seems to show with abundant clearness that the valuation of property to which this note relates is a valuation for stamp purposes alone.

There is nothing in the language of Act VII of 1870 from which it could be properly inferred that valuations for purposes of jurisdiction are for the future to be founded on its provisions, and, further, there is a schedule appended of provisions of the Statute law which are by the Act expressly repealed, all confined in their object to the levying of fees. Now as these later enactments fail to disclose any but a fiscal purpose, and the latest of them, by the enactments which it expressly repeals, implies that the change which it introduces is in that part of the law which relates to the levying of fees, there is, I think, very sound reason for concluding that they were not intended to provide any guide to the determination of the pecuniary jurisdiction of the Courts. It appears to me, therefore, that there is no ground for saying that the provisions in force up to the date of Act XXXVI of 1860, for ascertaining the pecuniary jurisdiction of the Courts of limited jurisdiction over suits coming before them, have been impliedly repealed by Act XXXVI of 1860, but that, on the contrary, the provisions of the law in Section 11, Regulation VI of 1816, as regards the Courts of the District Munsifs, and in Section 5, Regulation VII of 1827, as regards the Principal Sadr Amins' Courts still survive, and that by them the Courts of the Munsifs and Principal Sadr Amins, respectively, are bound. The former by express words, and the latter by provisions of the law which are incorporated with it, from the sole guides to these Courts for determining whether the pecuniary limits of their jurisdiction extend to suits instituted i.

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them. It follows that in Suit No. 362 there must be an issue to the Principal Sadr Amin to determine what is the value of the claim. In Suit No. 284 the decree of the Civil Judge must be reversed, and he must be directed to decide the suit on its merits, as it is clearly within the jurisdiction of the Munsif's Court, and in Regular Appeal No. 69 the decree of the Civil Judge must be affirmed, as the suit was clearly within the jurisdiction of the Munsif's Court.

KINDERSLEY, J.—It is, of course, obvious that there is no necessary connection between the valuation of a suit for purposes of jurisdiction and the valuation for purposes of taxation. The only question is whether such a connection has been created by Acts of the Legislature.

When the jurisdiction of the District Munsifs' Courts was defined by Regulation VI of 1816, the words "annual produce" had already a technical legal meaning given to them by Regulation III of 1802, and it cannot be doubted that the authors of Regulation VI of 1816, in using those words, intended them to be taken in that technical sense. And the meaning of the words in Regulation VI of 1816 has not been affected by the repeal many years afterwards of the regulation which first gave them that meaning.

Prior to 1816 the mode of valuation for purposes of taxation was the same as the mode of valuation for purposes of jurisdiction, and the first divergence appears to have been introduced by Regulation XIII of 1816, with respect only to the valuation of lands exempt from the payment of revenue to Government. The valuation of lands paying revenue to Government continued the same for purposes of taxation as for purposes of jurisdiction until the Stamp Act of 1867, by which the criterion of the market value was for the first time introduced. Act XXVI of 1867 purports to have been enacted, because it was expedient to amend the law relating to stamps, and I have not been able to find any indication that it was intended to affect the jurisdiction of the Courts. It appears to me that if the intention of affecting the jurisdiction of the District Munsifs' Courts had been in the minds of those who passed the Act, they would have expressed such intention. The original identity in the mode of valuation for both of the purposes above-

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mentioned was convenient, but I think it was only incidental, the Legislature never laid it down as a principle that the identity was always to continue, and the connection between the two purposes of valuation to be indissoluble. And, therefore, when a new criterion of valuation was introduced for stamp duty, I do not think that it carried with it by implication a new criterion of valuation for jurisdiction. For these reasons I concur in the judgment of Holloway and Innes, JJ. rather than in that of the Chief Justice.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 9 *of* 1870.

CHOCKALINGA PILLAI ... ...*Special Appellant.* (*Defendant*)

VYTHEALINGA PUNDARA SUNNADY...*Special Respondent*). (*Plaintiff.*)

Ejectment by landlord against tenant. It appeared that the land in dispute was the property of a muttum of which the plaintiff was the trustee : and had been let to the defendant's father under a muchalka (Exhibit A) dated 14th August 1837, entered into with the Collector, the manager of the property on behalf of the Government. The tenancy continued to be regulated by this agreement until plaintiff, in 1867, demanded an increased rent, which the defendant refused to agree to pay. Upon that demand and refusal, the plaintiff, at the end of the fasli, and without tendering a pattah for another fasli stipulating for the increased rent, brought his suit to eject. The defendant (appellant) contended that the right to put an end to his tenancy was conditional upon his failure to pay the rent fixed by the agreement. *Held* by SCOTLAND, C. J., upon the construction of the muchalka, that the plaintiff possessed the absolute right to put an end to the tenancy at the end of a fasli, unless the condition relied upon by the appellant was, by force of established general custom (which had not been alleged), or positive law, made a part of the contract of tenancy. That neither the Rent Recovery Act nor the Regulations operated to extend a tenancy beyond the period of its duration secured by the express or implied terms of the contract creating it. That, therefore the plaintiff had a right to eject the defendant at the end of a fasli.

By HOLLOWAY, J.—That whether the express contract was binding on the pagoda or not, it gave no right to hold permanently, and, that there is nothing in any existing written law to render a tenancy once created only modifiable by a revision of rent, but not terminable at the will of the lessor exercised in accordance with his obligations.

Enamandaram Venkayya v. *Venkatanarayana Reddi* and *Nallatambi Pattar* v. *Chinnadevanayagam Pillai* (I. M. H. C., 75 & 109) doubted

The judgment in the case of *Venkataramanier* v. *Ananda Chetty* (V. M. H. C., 122) has gone too far in lying down the rule as to a pattahdar's right of occupation.

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THIS was a Special Appeal against the decree of the Civil Court of Tranquebar, in Regular Appeal No. 114 of 1868, confirming the decree of the Judge of the Court of

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