which would, if obtained, have relieved him from all liability is equitably estopped from afterwards setting up the objection. It becomes unnecessary therefore to consider the rather nice question when by the contract of the parties a jurisdiction may be created which would not otherwise exist. The recent case of *Copin* v. *Adamson* (2) is an example of discordance of view upon the point.

1875. *January* 22. *R. A. No.* 49 *of* 1874.

We answer that the Subordinate Court has jurisdiction.

Appellate Jurisdiction.(a)

Regular Appeal No. 81 *of* 1874.

(Civil Miscellaneous Petition No. 21 *of* 1875.*)*

KALLAVETTI KURIYIL KUMHOLEN KUTTY..... { *Appellant.* *(Defendant.)*

NILAMBUR THACHARAKAVIL MANA VIKARAMEN *alias* THIRUMULPAD..... { *Respondent* *(Plaintiff.)*

He who seeks a declaration of matters not necessary to the immediate relief sought, must sustain the burden of making out the abstract proposition which he has volunteered to support, and it will even then be a matter for the discretion of the Court, not to be lightly exercised, whether it will undertake the solution of the problem.

Suit brought for a declaration of title to a considerable tract of country on account of a trespass committed by defendant on a particular hill. *Held*, that as to that particular hill, the plaintiff's claim was sustainable, and that that disposed of the only question which it was necessary to decide.

THIS was a Regular Appeal against the decision of I. K. Ramen Nair, the Subordinate Judge of South Malabar, in Original Suit No. 45 of 1873.

1875. *January* 25. *R. A. No.* 81 *of* 1874.

The suit was brought to establish plaintiff's jenm right to, and to obtain possession of, the hills mentioned in schedule A attached to the plaint, and valued at Rupees 6,000; to procure the demolition of the shed (kuttipura), valued at Rupees 10, wrongfully erected by the defendant on hill No. 11, and to recover 8 logs of timber, or their value Rupees 180, felled by the defendant.

(2) L. R., 9 Ex., p. 345.

(a) Present :—Sir W. Morgan, C.J., and Holloway, J.

1875. *January* 25. *R. A. No.* 81 *of* 1874.

The plaintiff alleged that the hills mentioned in the plaint were his ancestral jenm and in his possession, that the defendant, who has no right whatever thereto, having assembled a large number of persons, forcibly felled some teak trees thereon and attempted to carry away the timber, whereupon plaintiff, with the view of preventing the removal of the timber, preferred a complaint in the Ernad Police Inspector's kutcherry on the 1st January 1873. On the Inspector's report the District Magistrate of Malabar passed an order directing the 2nd Class Magistrate of Ernad to investigate the matter. This officer having repaired to the hill, found that the defendant had erected a shed and occupied it with his own people and had felled 8 logs of timber. He thereupon submitted a report of his having issued an order to defendant to abstain from any act towards removing the timber from the place where it lay, and ejected the men occupying the shed. As the defendant contended in this case that the hills were the jenm (absolute) property of Athi Koten Thenapurath Nair, and that they were leased to defendant's father on perpetual tenure, the Magistrate in his order dated 10th July 1873 referred the plaintiff to the Civil Court for redress, and for a determination on the question of title.

The defendant alleged that the southern boundary of the hills is Koranayen Poya and not Maniyen Poya, as incorrectly shown in the plaint schedule; that as the hills up to Koranayen Poya, which is about 6 miles from Maniyen Poya, form one group, the latter Poya, which flows through these hills, could not have been shewn as the boundary; that the names of the hills were incorrectly entered in the plaint; that there is no hill called Parappapara or Kalakangott within the plaint boundaries; that the dismissal of the complaint by the Magistrate strengthened his right to possession; that the plaintiff has no right whatever to the hills and was never in possession; and that of these hills those marked Nos 3, 5 and 24 are included in the more important ones, viz.: Vallia Pattiyati, Cheria Pattiyati and Katakasheri, and were the jenm of Maruvithil Athicoter Vaganatt Thenapurath Etathil Chappen Nayar and another, who conveyed

1875. *January* 25. *R. A. No.* 81 *of* 1874.

them in Vrischigom 1022 (November, December 1846) to defendant's father, the deceased Alli Kutty, in perpetuity.

The Subordinate Judge in giving judgment observed :— " The evidence of the 1st and 2nd witnesses (village officers) for the plaintiff satisfactorily proves that the forests in dispute are situated in Nilamboor Amshom in the Ernad Taluk, and I doubt whether better witnesses than the above can be had to prove a point like this. That the above officials have truly testified to the fact is proved by the prosecution of the Police complaint regarding these forests before the Tahsildar of Ernad, and by the ultimate disposal of the same by the Deputy Magistrate of Calicut Division without any objection being raised to their jurisdiction over the matter. Plaintiff lays claim to forests situated in Nilamboor Amshom, and defendant admits that the plaintiff is possessed of forests bearing the same name as the plaint forests, on jenm right. Then the above 1st and 2nd witnesses further prove that the forests owned by the plaintiff are the very forests here sued for, and that there are no other forests in Nilamboor Amshom which are called by the names given in the plaint, and their evidence is strongly supported by the documents B to S and U. B is an old pymash account of 993 (1817-18) of forests Nos. 1 and 4. Objections to the reception of the documents C, D and E may perhaps be raised on the ground of there being summary decisions. I shall therefore leave these documents out of consideration. We have still the documents F to S to supply their place. These documents supported by the evidence of the above witnesses prove beyond a doubt that in several successive years Moden crops were raised on these forests by plaintiff and his tenants, and that the forests are assessed in their names. Hence the plaintiff has, in my opinion, produced the best evidence that can be procured to prove his title to, and possession of, the forests in dispute, and I am bound to give him judgment as sued for with all costs against the defendant."

The defendant appealed from the decree of the Subordinate Judge.

1875. January 25. R. A. No. 81 of 1874.

Mr. O'Sullivan and *Mr. Poonen*, for the appellant, th defendant, contended that the plaintiff had failed to prov title to any part of the land, but that, even if it could b held that he had proved any title to the land on which th alleged trespass was committed, the Court could not make a decree on that account, declaring generally that he was enti tled to all the lands in the plaint mentioned. He was admit tedly in possession of the greater part of the property, o which he seeks to obtain a declaration of title in this suit.

Mr. Spring Branson, for the respondent, the plaintiff, contended that a cloud had been cast upon the plaintiff's title to the whole of the lands in dispute, by the claim of title thereto set up by the defendant, a claim he attempted to enforce by entry upon part of the land. It is admitted that the title to the whole is the same as that to the part trespassed upon, and the object of the wrongful entry of the defendant was to manufacture evidence for himself of so called acts of ownership. The suit has been so conducted by both parties throughout, as to raise the question of title to the whole of the property, and defendant cannot now contend that the declaration asked for and obtained, is too general.

The Court delivered the following

JUDGMENT:—In the present case a declaration of title to a considerable tract of country has been sought and granted on account of a trespass committed by defendant upon a particular hill, alleged to belong to plaintiff.

As to the particular hill, we are of opinion that the evidence is sufficiently cogent to sustain the plaintiff's claim, and this is quite sufficient for the determination of the only question, which it was necessary to decide. There is a great deal of evidence of a somewhat loose and unsatisfactory character of acts done by the plaintiff upon other of these hills, and the case has no doubt been conducted by both parties on the assumption that the owner of three of the principal ones is owner of the whole. This, however, does not absolve us from considering the propriety of making a declaration so extensive upon evidence so slight. As be-

1875. *January* 25. *R. A. No.* 81 *of* 1874.

tween these parties, we agree that the preponderance of evidence is in favor of the plaintiff, but he who seeks a declaration of matters not necessary to the immediate relief sought must sustain the burden of making out the abstract proposition which he has volunteered to support, and it will even then be a matter for the discretion of the Court, not to be lightly exercised, whether it will undertake the solution of the problem. It seems to us that we shall do all, which can be discreetly done, by declaring that we confirm the decree so far as it declares defendant a trespasser upon the particular hill. We see no reason to doubt that he is so, and we must not be considered as either affirming or disaffirming the plaintiff's claim to the others. We merely decide that it is a question upon which, in this case, we ought not to enter. The defendant will pay the costs of this appeal.

Appeal dismissed with cost.

Judgment of Lower Court modified.

Appellate Jurisdiction.(a)

Appeal No. 2 *of* 1875.

M. VYTHELINGA MUDELLY..... { *Appellant.* *(Defendant,)*

M. CUNDASAWMY MUDELLY..... { *Respondent,* *(Plaintiff.)*

Leave to institute a suit relating to property out of the jurisdiction as well as to property within such jurisdiction was refused by one Judge on the 30th June 1874. The same application, in the same suit, between the same parties, relating to the same property, and founded on the same cause of action was made before another Judge on the 15th December 1874, and the leave prayed for was granted.

Held, that the order should not have been made, and that it should be discharged.

1875. *January* 26. *Appeal No.* 2 *of* 1875.

THIS was an Appeal against the order of Mr. Justice Kernan, dated the 15th December 1874, admitting the plaint in Original Suit No. 12 of 1875.

On the 30th June 1874 the plaintiff (respondent herein) through his then attorney Mr. Clarke, applied for leave to file a certain plaint then presented against appellant, for an

(a) Present :—Sir W. Morgan, C.J., and Holloway, J.