posed. I fully adhere to the judgment of the High Court for which I am responsible(*b*), and especially to the statement that the ordinary gains of science by one who has received a family maintenance are certainly partible. I do not believe, moreover, that within the meaning of the authorities the Vakíl's business is matter of science at all.

1872. *January* 30. *R. A. No.* 56 *of* 1871.

(*b*) Reported at 2, M. H. C. R., 75.

Appellate Jurisdiction. (*a*)

Special Appeal No. 367 *of* 1870.

PERIYANA'YAGAM PILLAI.....*Special Appellant.*
VI'RAPPA NAIKAN.....*Special Respondent.*

Plaintiff sued for certain arrears of rent. The suit was dismissed as to Faslis 1271, 1272 and 1275 on the ground that no pattahs had been tendered for those Faslis. On Special Appeal it was contended that no tender was necessary, because a suit which had been brought before Fasli 1271 for the determination of the proper rate of rent was pending during those Faslis. *Held*, that the pendency of that suit did not render the tender of pattahs unnecessary, and that the present suit was rightly dismissed.

1872. *February* 3. *S. A. No.* 367 *of* 1870.

THIS was a Special Appeal against the decision of A. P. Srínivása, the Principal Sadr Amín of Tinnevelly, in Regular Appeal No. 223 of 1868, modifying the decree of the Court of the District Munsif of Srivaikuntam in Original Suit No. 934 of 1866.

The suit was brought by the Dharmakarta of the temple at Raméswaram to recover arrears of rent due by defendant for certain land held by him as a tenant of that institution. The arrear claimed was for Faslis 1265 to 1272, and for 1275. The defence was that the claim was barred by the Act of Limitation, and that, under Section 7, Madras Act VIII of 1865, the plaintiff could not come into Court without tendering such a pattah as the defendant was bound to accept.

The Court of First Instance pronounced no opinion on the second plea, but found on the first that plaintiff's demand for Faslis 1265 to 1270 was barred, and decreed to him rent for Faslis 1271, 1272 and 1275. The plaintiff appealed against this decision, and the defendant, under Section 348 of

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

1872. *February* 3. *S. A. No.* 367 *of* 1870.

the Civil Procedure Code, objected to so much of the decision as went against him. The Principal Sadr Amín considered that the non-tender of such a pattah as the defendant was bound to accept precluded the plaintiff from bringing the suit. He therefore, in modification of the Munsif's decree, dismissed the suit.

The plaintiff preferred a Special Appeal on the ground that

No tender of pattahs was necessary for Faslis 1271, 1272 and 1275, because a suit which had been brought before Fasli 1271 for the determination of the proper rate of rent was pending during that period.

Sanjiva Rau, for the special appellant, the plaintiff.

Scharlieb, for the special respondent, the defendant.

The Court delivered the following Judgments :—

INNES, J.—The question for decision in this Special Appeal is whether the pendency of the litigation between the parties during Faslis 1271, 1272 and 1275, rendered the tender of pattahs unnecessary to entitle plaintiff to sue for the rent in arrears for those Faslis.

I am of opinion that it did not. The suit then pending was instituted for the purpose of ascertaining the proper rate of rent which should have been entered in pattahs for prior Faslis. But there was nothing to prevent plaintiff from tendering a pattah for what he considered the proper rate. The provisions of the law applying to this case (Regulation V of 1822, Section 9) are positive in requiring that such a suit shall be dismissed with costs, unless it be shown that a pattah has been tendered and refused, or that both parties had agreed to dispense with the use of pattah and muchalka. It is not contended that either of these conditions was complied with expressly, but it is said that the suit was tantamount to a continuing tender of pattah, or, in other words, that the tenant was bound to presume, from the pendency of the suit, that a yearly tenancy on the same terms was during that period regularly offered at the close

1872. *February* 3. *S. A. No.* 367 *of* 1870.

of each Fasli. If the Act had intended this, I think it would have clearly said so. I think the decisions of the Courts below are right, and I would dismiss the Special Appeal with costs.

KINDERSLEY, J.—I am of the same opinion.

Appellate Jurisdiction. (*a*)

Special Appeals Nos. 377, 378, 379, 380, 381 *and* 387 *of* 1871.

NA'GAYASA'MI KA'MAYA NAIK, Zamindár of Saptúr..... } *Special Appellant.*

PANDYA TE'VAR ..... *Special Respondent in No.* 377.

PALANIYANDI KONE ... *Special Respondent in No.* 378.

MUTTU KONE ... ... *Special Respondent in No.* 379.

ERULAPPA KONE ... ... *Special Respondent in No.* 380.

RANGANA'DA TE'VAR ... *Special Respondent in No.* 381.

YIRA'MASA'MI KONE ... *Special Respondent in No.* 387.

Plaintiffs sued, under Sec. 12 of Madras Act VIII of 1865, to be re-instated in the possession of certain lands from which they alleged they had been wrongfully ejected by the defendant, a Zamindár. Defendant pleaded that the suit was not maintainable as the lands in question formed part of his "pannai" lands, and were not a part of his zamindárí. *Held*, that the suit was maintainable before the Revenue authorities under Section 12, Madras Act VIII of 1865.

1872. *February* 5. *S. A. Nos.* 377, 378, 379, 380, 381 *and* 387 *of* 1871.

THESE were Special Appeals against the decision of J. D. Goldingham, the Civil Judge of Madura, in Regular Appeals Nos. 119, 111, 110, 109, 112 and 113 of 1870, reversing the decisions of the Deputy Collector of Madura in Original Suits Nos. 88, 86, 85, 84, 89 and 90 of 1869 respectively.

The plaintiffs sued, under Section 12 of Act VIII of 1865, for re instatement in certain lands which they had been ejected from by the defendant, and to recover damages, alleging that the lands belonged to them (plaintiffs) hereditarily; that varam had been paid to the Zamindár on account of the said lands according to the custom obtaining in the said

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