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NOTES OF RECENT CASES.

*Hormull, J.*  
17th April, 1940.

*Jagannatha Aiyangar v. Suppiah Chettiar.*  
C.R.P. No. 2262 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 14—Hindu family debt—Respective liability of agriculturist and non-agriculturist members—Applicability and scope of S. 14.*

If a debt is a family debt it must be a family debt with regard to everybody and the members are personally liable for their proportionate share of debt and they cannot be liable unless the debt is a contractual one. S. 14 is applicable to such a debt. Where there are two non-agriculturist and five agriculturist members in a joint Hindu family the non-agriculturists are liable for 2/7 of the unscaled debt while the agriculturists are liable for 5/7 of the scaled down debts. It is not necessary that the property should be split up into individual shares and each share made liable only for its own share of the family debt.

V. Ramaswami Aiyar for Petitioner.

R. Sethurama Sastri for Respondent.

K. S.

*Wadsworth, J.*  
22nd April, 1940.

*Syed Sabjumiah Hussain v. Kalayigar Abdul Vaheb Sab.*

C.R.P. No. 174 of 1939.

*Court Fees Act (VII of 1870), S. 7 (v), (c)—Valuation for court fees at 15 times the nett profits—Profits of year previous to the filing of suit; in the nature of a windfall—If to be excluded from consideration—C. P. Code, S. 115—Revision—Decision on court fee in favour of plaintiff—Decision affecting jurisdiction—Interference in Revision.*

In a suit for possession of land it was found that a portion of the land had been leased to the Municipality during the year previous to the filing of the suit at an annual rental of Rs. 186 for use as a nightsoil dumping ground. It was contended that this profit was in the nature of a windfall and should be excluded from consideration in determining the court-fee.

*Held, S 7 (v), (c) does not give to the Court any option to consider whether or not the nett profits for the year preceding the presentation of the plaint are exceptional or unusual. Such profits cannot be excluded from consideration.*

*Held further*, where a decision of the lower appellate Court though on a question of court-fee directs the trial Court to assume a jurisdiction which it has not got, the High Court can interfere in revision.

V. Govindarajachari for Petitioner.

P. Chandra Reddi for Respondent.

K. S.

Horwill, J.  
23rd April, 1940.

Muhammad Sahib v. Kunthanmull Sowcar.  
C.R.P. No. 529 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 9—Interest calculated and paid off in full on 18th November, 1935 on promissory note of 4th March, 1933—Debtor whether entitled to have the interest calculated at 5 per cent., and the amount already paid adjusted accordingly—S. 12—Debt outstanding after scaled down debt—From what date to carry interest.*

On 4th March, 1933, the defendant executed a promissory note for Rs. 300 in favour of the plaintiff. In October of that year he paid Rs. 100 towards principal. On 18th November, 1935 the interest outstanding was paid off. In a suit for the balance of principal and interest from the date of coming into force of Act IV of 1938 it was contended that interest at 5 per cent. must be calculated from date of debt and added to the principal and the amounts actually paid should be deducted.

*Held*, the interest having been paid off in full the plaintiff was entitled to a decree for the balance of the principal outstanding,

*Held further*, S. 12 entitled a creditor to interest on any sum remaining outstanding after the debt has been scaled down from the date upto which it has been scaled down that is, only from the date of the decree.

Basheer Ahmed Sayeed for Petitioner.

K. A. Chakravarthy for Respondent.

K. S.

Wadsworth and  
Patanjali Sastri, JJ.  
26th April, 1940.

Motam Kottayya v. Singampalli Venkata  
Pannayya.

C.R.P. No 1317 of 1938.

*Madras Agriculturists' Relief Act (IV of 1938), Ss. 7, 8 and 9—"Decree"—Decree passed after the commencement of the Act—If liable to be scaled down.*

On a promissory note executed on 29th October, 1929 a suit was brought on 3rd January, 1938 and the written statement filed on 30th January, 1938. Though Madras Act (IV of 1938) came into force when the suit was pending, the defendant failed to put forward a claim to have the debt scaled down in accordance with the Act and a decree was passed on 18th April, 1938 for the full amount claimed by the plaintiff. The defendant then applied for scaling down the debt on 29th April, 1938.

*Held*, reading the Act as a whole the word "decree" in Ss. 7, 8 and 9 must be taken to refer to decrees passed before the commencement of the Act and the decree passed after the commencement of the Act cannot be scaled down.

Kanakaraju v. Achutaramanaraju, (1940) 1 M.L.J. 600, overruled.

A. Lakshmayya for Petitioner.

M. Subramanya Sarma for Respondent

K. S.

*Wadsworth and Rajanah Sastri, JJ.*, *Budiredla Ramamurti v. Madha Sataramsayya*,  
 11th April, 1940. O.B.P. No. 2010 of 1939.  
*Madras Agriculturists Relief Act (IV of 1938), Ss. 7, 8, 9 and 19—*  
*Compromise decree—When can be scaled down on the basis of the original debt—*  
*Uncertified payments towards decree—How far can be proved for purposes of*  
*scaling down.*

On 26th March, 1928, petitioner executed a promissory note in settlement of an account starting from 1922. On 3rd April, 1928, he executed a second promissory note for a fresh advance. On 20th July, 1929, he executed a promissory note, for Rs. 4,600 for the amount due on the two promissory notes and a small amount in cash advanced at that time. In a suit on the promote there was a compromise decree on 8th August, 1932, for Rs. 7,160 for the debt, costs and subsequent interest and time was given till 1st October, 1932, for payment. In an application to scale down this compromise decree,

*Held*, when there is a decree passed before the 1st October, 1932, in terms of a compromise which itself is demonstrably a renewal of an anterior debt, the Court must scale down the debt, under s. 8 of the Madras Act, IV of 1938, treating as the principal the amount originally advanced together with the amount of any sums subsequently advanced. Whether a compromise is or is not a renewal of a pre-existing liability must to a large extent be a question of fact in every case. When a judgment-debtor applies under S. 19 of Madras Act, IV of 1938, to scale down a decree he can prove payments which have not been certified for the purpose of satisfying the decree regarding costs. For other purposes the debtor would have to establish those payments in the ordinary way under the Civil Procedure Code, by getting them certified in Court, if he wants them to be taken into consideration as payments towards the decree.

V. Piyanna for Petitioner.

D. Naraswamy for Respondent.

K. S.

*Wadsworth, J.*, *Yelamanchilli Basavayya v. Jaldn Manikyala Rao*,  
 1st May, 1940. O.B.P. No. 534 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 23—Sales in execution held before 1st October, 1937—If can be re-opened by the Court.*

S. 23 empowers the Court to re-open sales held under a decree on or after 1st October, 1937 notwithstanding the fact that the sales have been confirmed. But there is no provision empowering the Court to re-open a sale held before 1st October, 1937, though the sale is confirmed and decree is satisfied after that date.

K. Krishnamurthy for Petitioner.

N. Vasudha Rao for Respondent.

K. S.

*The Chief Justice and Madipatti Narasimha Moorthi v. Hayat*  
*Krishnaswami Aiyangar, JJ.*  
 1st May, 1940. S. A. No 341 of 1935.

*Civil Procedure Code (V of 1908), O. 41, r. 27 (2)—Admission of fresh evidence in appeal—Admission of documents not necessary for remedying some inherent lacuna or defect but for providing corroboration for oral testimony which was disbelieved by trial court—Legality.*

The lower Appellate Court admitted some fresh documents in evidence. The admission of those documents was not for the purpose of remedying

some inherent lacuna or defect but for the purpose of providing corroboration for oral testimony which had been disbelieved by the trial judge. The oral evidence was complete and if it had been believed, it would have substantiated the first respondent's case. The additional evidence was not necessary for the court to appreciate the first respondent's case or to pronounce judgment on it.

*Held*, that the lower Appellate Court was wrong in admitting such evidence and the case must be decided on the evidence tendered in the trial Court.

V. Govindarajachari for Appellants.

P. Somasudharam for Respondent.

K. S.

Wadsworth, J.  
1st May, 1940.

Roopchand Merlacha v. Sha Motaji Mokalaji.  
O.R.P. No. 482 of 1940.

*Madras Debt Conciliation Act (XI of 1936), S. 25—Stay under—Procedure—Duration of stay—If can be faced by the Court.*

When an application to the Debt Conciliation Board is rejected for a formal defect under S. 7, the stay granted under S. 25 will cease to operate but when that application is re-presented it becomes once more a subsisting application under S. 4 and the provisions of S. 25 will come into force and the executing Court will be obliged when the fact of this re-presented application is brought to its notice to stay proceedings in execution. That stay will operate until the application is dismissed subject of course to the legal requirement that the application shall be disposed of within one year. It is not open to the Court to order stay for any particular period. The duration of the stay is fixed by Statute and out of the hands of the Court altogether.

B. Narasimham for Petitioner.

P. S. Kothandapani for Respondent.

K. S.

Horwill, J.  
1st May, 1940.

Dara Tripura Sundaralingam v. Vingamuri Venkataramanayya.  
O.R.P. No. 2461 of 1939.

*Madras Debt Conciliation Act—Ss. 4 and 25—Stay of execution of money decree pending proceedings before the Debt Conciliation Board under S. 4—Court if can impose any conditions in staying proceedings.*

In staying proceedings under S. 25 of the Madras Debt Conciliation Act, the Court cannot impose any conditions, for the power to impose a condition implies a corresponding power to dismiss the application, if the condition is not fulfilled. The imposition of any condition is therefore *ultra vires*. The Court has no discretion but to stay. No petition for stay is necessary. The Court upon its attention being drawn to the fact that proceedings are pending before the Debt Conciliation Board is bound to stay whatever proceedings are before it in connection with that debt.

P. Somasundaram for Petitioners.

V. Venkataramanayya for Respondent.

K. S.

Wadsworth, J.  
23rd July, 1940.

Adiseaha Iyer v. Muthukruppan Chettiar.  
O.R.P. No. 303 of 1937.

*C. P. Code (V. of 1908), S. 73—Decree by a creditor against three persons—Another person getting a decree against one of them and his sons—Surety—Properties of the judgment-debtor brought to sale—Execution application filed against the surety by another creditor also—Whether rateable distribution possible in the circumstances.*

A obtained a decree against B, C, and D. X obtained a decree against B and his sons E and F. A had B arrested who was released on M standing surety for him. X brought B's properties to sale, but before the realisation of the sale proceeds, A had filed an execution petition against the surety M and on the strength of that claimed rateable distribution in the assets realised by X. It was contended by X that as A had filed an execution petition only against the surety M and not against the common judgment-debtor, he was not entitled to apply under S. 73.

*Held*, an application under S. 145, C.P. Code, to execute a decree passed against B by proceeding against his surety M is an application to execute a decree passed against B so as to entitle the decree-holder to apply under S. 73, C.P. Code, for rateable distribution of assets realised in execution of another decree passed against B. There is no separate decree against the surety which is being executed.

49 Mad. 325, followed.

S. S. Ramachandra Iyer for Petitioner.

T. E. Srinivasan for Respondent.

K. C.

Wadsworth, J.  
23rd July, 1940.

Muthuswami Chettiar v. Periyal Achi and another.  
O.R.P. No. 1378 of 1938.

*Provincial Insolvency Act (V of 1920), S. 73 (2)—Insolvency—Widow of undischarged insolvent—Suit for declaration that she was entitled to the decree amount included to be realised by transferee decree-holder from her husband—Maintainability of suit—Annulment of insolvency—Limits of.*

The widow of an undischarged insolvent instituted a suit on 21st June, 1937, claiming that a mortgage decree had been nominally transferred in favour of the defendant by her husband and that the defendant in execution of that decree bought the mortgaged properties himself and had them re-sold in two lots on 21st June, 1934, for Rs. 900 and on 12th September, 1934, for Rs. 800. It was claimed that the defendant was bound to pay the plaintiff the said sums with interest. To this suit the Official Receiver was added as party defendant though a decree was prayed for in favour of the widow. The lower Court recorded a finding that the suit was maintainable on the issue raised by the defendant as to the maintainability of the suit which was tried as a preliminary issue.

*Held*, that the revision petition was maintainable as the question of the jurisdiction of the Court arose directly for decision and as a decision on this question will terminate unnecessary proceedings. *Further held*, that suits were not maintainable by the insolvent or his representative till the annulment of the insolvency and that a suit, bad at the inception, could not be validated by a subsequent annulment.

1929 M. 480, followed.

1937 M. 717, referred to and distinguished.

1918 M. W. N. 289, referred to and followed.

K. V. Ramachandra Iyer for Petitioner.

K. S. Desikan and C. D. Venkataraman for Respondent.

K. C.

N R C

Wadsworth, J.  
23rd July, 1940.

Vedala Vallabhacharyulu v. Veda Rangacharyulu  
and another.

C.B.P. No. 1023 of 1939.

*Madras Agriculturists Relief Act (IV of 1938)—Court hearing appeal from decision in a suit wherein plaintiff seeks to escape liability from a decree of another Court—If has jurisdiction to scale down the decree attacked.*

The Court hearing an appeal from a decision in a suit wherein the plaintiff seeks to escape liability from a decree of another Court, has no jurisdiction under S. 19 or any other section of Madras Act IV of 1938 to scale down the decree which is being attacked at the instance of the plaintiff.

C. Ranga Rao for Petitioner.

P. V. Vallabhacharyulu for Respondent.

K. S.

Lakshmana Rao, J.  
21st July, 1940.

Kesava Reddi v. Linga Reddi.  
Orl. App. No. 176 of 1940.

*Criminal trial—Conviction founded on evidence of approver—Jury not told that the evidence of accomplice must be corroborated in material particular—Sustainability of conviction.*

A conviction was founded on the evidence of the approver which was not corroborated in any material particular bearing upon the implication of the first accused. The jury was not told that the evidence of an accomplice must be corroborated in some material particular bearing upon the implication of the accused in the crime.

Held, the conviction cannot be sustained.

N. Somasundaram for Appellant.

The Public Prosecutor for the Crown.

K. S.

King, J.  
21st July, 1940.

Gandikota Kamanna v. Tonilappu Satti Reddy.  
C.B.P. No. 2863 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 3 (4), proviso B—Exclusion from definition of "agriculturist"—Assessment for four consecutive half years from October, 1935, to September, 1937—If necessary—If debtor should be validly "assessed" to exclude him from definition of "agriculturist".*

It is quite clear from the language of S. 3 (4), proviso B of Act IV of 1938 that assessment for four consecutive half years from October, 1935 to September, 1937, is not required for exclusion of a debtor from the definition of "agriculturist". A person who is excluded from the definition of "agriculturist" under the proviso need not have been validly assessed. The words are simple "has been assessed" and they are qualified by no adverb relating to the correctness or validity of the assessment.

P. Somasundaram and P. Suryanarayana for Petitioner.

K. Kameswara Rao for Respondent.

K. S.

18th July, 1940.

S.A. No. 1098 of 1937.

*Limitation Act (IX of 1908), S. 19 (1)—Endorsement of payment of interest by mortgagor on mortgage deed—Subsequent registration of endorsement—Suit on mortgage within 12 years of registration but beyond twelve years of actual endorsement—Suit whether barred by limitation.*

A mortgage for Rs. 200 was executed on 9th June, 1911. On 2nd June, 1928, the mortgagor paid Rs. 50 towards interest and the payment was endorsed by the mortgagor on the mortgage bond. On 29th September, 1928, this endorsement was registered, when the execution of the endorsement was admitted. The present suit was instituted on 18th July, 1935.

*Held*, that an admission of execution before the Registrar is an admission not only of the execution but has the same efficacy as an admission of the contents of the document and therefore of the liability of the executant imported by it. The admission before the Registrar constitutes a fresh acknowledgment of liability within the meaning of S. 19 of the Limitation Act. 57 Mad. 43, followed.

K. Krishnaswami Aiyangar for Appellant.  
L. S. Veeraraghava Aiyar for Respondents.  
K. S.

Abdur Rahman, J.  
22nd July, 1940.

Kanipakkam Venkata Reddi, Petitioner.  
O.R.P. No. 769 of 1940.

*Madras Agriculturists' Relief Act (IV of 1938), S. 8 (1)—Promote executed by mortgagor for interest due in respect of mortgage—Deemed to be discharged as interest outstanding on 1st October, 1937.*

A promissory note was taken for the interest due in respect of a mortgage and nothing was paid in cash. In a suit on the promissory note.

*Held*, it must be deemed to be discharged as interest outstanding on 1st October, 1937.

S. A. Seshadri Aiyangar for Petitioner.  
K. S.

Krishnaswami Aiyangar, J.  
23rd July, 1940.

Rangayya Chetti v. Venkatraya Chetti  
and another.

S.A. No. 687 of 1937.

*Limitation—Part payment of debt evidenced in writing signed by debtor—Intention to keep alive debt—If necessary.*

The statute attaches to a part payment when it appears in a writing signed by the person making the payment a certain efficacy, that the debt is kept alive. It is unnecessary to search for the intention of the payer.

(1940) 1 M.L.J. 895 (P.O.), Relied on; 68 M.L.J. 73 no longer good law.

T. K. Srinivasathathachari and K. Ramaswami Aiyangar for Appellant.  
B. C. Seshachalla Aiyar and C.S. Rajappa for Respondents.

K. S.

Wadsworth, J.  
25th July, 1940.

Viswanatha Pattar Kariakkar v. Sankaran Unai.  
O.R.P. No. 875 of 1939.

*Small Cause Court returning plaint for presentation to Court having original jurisdiction—Later Court if can again return the plaint.*

A Small Cause Court having found that it had no jurisdiction on its order for the presentation of the plaint to the Court having original jurisdiction, even if erroneous cannot be questioned by the latter Court.

10 M.L.J. 818, relied.

C. S. Krishnamurthi Aiyar and C. S. Vidyasankara Menon for Petitioner.  
K. Kuttikrishna Menon for Respondent.

K. S.

29th July, 1940.

and others.

O.R.P. No. 181 of 1939.

*Madras Agriculturists Relief Act (IV of 1938)—Judgment-debtor depositing under O. 21, r. 89, C.P. Code, the amount necessary to have sale set aside and decree-holder drawing amount in full satisfaction of decree—Application for scaling down—Sustainability—Deposit on date when Act IV of 1938 came into force—Effect.*

The petitioner deposited under O. 21, r. 89 of the Code of Civil Procedure the amount necessary to have the sale set aside and this amount was withdrawn by the decree-holder in full satisfaction. The deposit was made on the date when Act IV of 1938 came into force but the application for scaling down was made long after.

*Held*, there no longer remained a debt to found an application under Act IV of 1938 or a decree to scale down. There is no subsisting sale to set aside and the fact that the deposit was made on the day the Act came into force has no bearing as the application was made long after.

J. S. Vedamanickam for Petitioner.

K. S.

Venkataramana Rao, J.

30th July, 1940.

Bethina Pandithan v. The Trichinopoly

Municipality.

S.A. No. 969 of 1937.

*Deed—Construction—Standard of measurement—"Human foot" mentioned in document—Computation—Need for taking evidence as to rate of conversion.*

The human foot was mentioned as the standard of measurement in certain documents in a case. The District Judge proceeded to consider the case on the assumption that one human foot was equal to ten inches.

*Held*, the case ought not to have been dealt with on that footing. Evidence should be adduced to find out the rate of conversion of the human feet into inches with reference to the documents in question.

J. S. Vedamanickam and T. Bhaktiam for Appellant.

N. Sivaramakrishna Aiyar for Respondent.

K. S.

Lakshmana Rao, J.

1st August, 1940.

In re Hussain Khan alias Sulaiman Khan

and another.

Orl. App. No. 199 of 1940.

*Madras Children Act (IV of 1920), Ss. 21 (1) and 26 (1)—Young person charged under S. 226, I.P. Code, pleading guilty—Sentence of Rs. 50 fine—Notice under S. 21 (1) of Madras Children Act to father and direction under S. 26 (1) to pay the fine—Father not given opportunity to show that he had not concurred to the commission of offence—Proper procedure.*

The first appellant a young person pleaded guilty to a charge under S. 226, I.P. Code, and he was sentenced by the Juvenile Court to pay a fine of Rs. 50. The second appellant, the father, was present in obedience to the notice under S. 21 (1) of the Madras Children Act and he was directed to pay the fine under S. 26 (1) of the Act. No opportunity was given to him to show that he had not concurred to the commission of the offence by the appellant nor was there any indication that the offence was due to any neglect of the father.

*Held*, the order under S. 26 (1) imposing the fine should be set aside and the proper course was to commit the first appellant to the custody of his father on his executing a bond to be responsible for the good behaviour of the son.

P. A. Krishnamurthi Nair for Appellant.

The Crown Prosecutor for the Crown.

K. S.

*King, J.* Puthuvettil Cheeru v. Chennakel Pannoru  
24th July, 1940. O.M.S.A. No. 14 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 15—Assignee from original tenant, not personally liable for rent prior to assignment to him—If entitled to benefit under S. 15.*

The appellant was an assignee of the original tenant and in a claim for arrears of rent by the lessor he claimed that by his payment of the rent due for Faslis 1846 and 1847 all the arrears were wiped out under S. 15 of Act IV of 1938.

*Held*, though the arrears are not payable personally by the assignee he can take full advantage of S. 15 and an assignee is in no worse position than an original lessee.

C. K. Viswanatha Ayyar for Appellant.

P. Govinda Menon for Respondent.

K.S.

*Patanjali Sastri, J.* Ramachandra Rao, minor by next friend  
24th July, 1940. Veerayya v. Butchamma,  
O.R.P. No. 1900 of 1938.

*Court Fees Act (VII of 1870), S. 7, Cl. (5)—Suit impeaching alleged will executed by his father as forgery and that property was joint family property and for possession—Court-fee payable.*

Where the plaintiff impeaches an alleged will by his father on the ground that it is a forgery and also on the ground that the property disposed of by it was joint family property and claims possession, the suit is not a mere suit for declaration without consequential relief. If the will is invalid the plaintiff will be entitled to the property in question. The correct Court-fee payable will be on the market value of the property whose possession is prayed for.

A. Lakshmayya for Petitioner.

The Government Pleader (B. Sitardina Rao) and V. Govindarajachari for Respondent.

K.S.

*Lakshmana Rao, J.* Belayya Naidu—Accused.  
25th July, 1940. Ori. App. No. 554 of 1939.

*Madras City Police Act (III of 1938), Ss. 37 (2) and 45—Using premises for receiving bets on horse races—Offence under S. 37 (2)—Persons found in the premises making calculations, etc., as to result of horse race—Liability to conviction for offence under S. 45 of the City Police Act.*

Where the accused uses his place of business for conducting a bucket shop he would be guilty of an offence under Ss. 37 (2) and 45 of the City Police Act of permitting the place to be used for the purpose of gaming on horse races and conducting or assisting in the business of a common gaming house. Other persons who were found in the premises making calculations would be guilty under S. 45 of assisting in conducting of the business of the common gaming house.

B. T. Sundararajan and C. C. Soman for Appellant.

The Crown Prosecutor for the Crown.

K.S.

*King, J.* Godavarti, Surayya v. Mantravadi Gopalam.  
26th July, 1940. O.R.P. No. 618 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 8—Assignee of creditor is "same creditor" within the meaning of S. 8—Advanced as principal?—Meaning.*

The fact that there have been assignments of the promissory notes cannot prevent assignor and assignee being the "same creditor" within the meaning of S. 8 of the Act. The words "advanced as principal" occurring in the explanation to the section must be read in their ordinary every day sense as referring to actual fresh loans and not as referring to arrears of interest treated as principal at the time of the renewal of the promissory note.

Followed by *Wadsworth, J.*, in O.B.P. No. 140 of 1939 in judgment dated 29th July, 1940.

*K. Bhimasankaram* for Petitioner.

*K. Kotayya* for Respondent.

K.S.

*Wadsworth, J.* *Kamakshi Chetty v. Alaganan Chettiar.*  
29th July, 1940. O.B.P. No. 905 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 27—Certificate given by Local Board—If conclusive of the facts which it states.*

A certificate given by a Local Board is not conclusive of the facts which it states. It is open to the other side to let in evidence that the certificate is not true—whether the error alleged relates to the amount of the tax or the nature of the income in respect of which it was levied.

*S. Panahapagesa Sastry* and *K. E. Krishnaswami Aiyar* for Petitioner.

*T. P. Gopalakrishna Aiyar* for Respondent.

K.S.

*King, J.* *Adhinoola Udayan v. Govinda Udayan.*  
30th July, 1940. A.A.O. No. 322 of 1939.

*Limitation Act (IX of 1908), Arts. 181 and 186—Decree and ascension against joint family property—Purchase by decree-holder—Suit by minor sons of decree-holder on attaining majority to recover possession of the property as not belonging to joint family but exclusively to themselves—Sale sought to be set aside whether void or voidable.*

A decree-holder, who had obtained a decree against a father personally and against the joint family property of the father and his two minor sons himself purchased some properties in the sale in execution of his decree as joint family property. One of the sons on attaining majority sued to recover the property contending that it was not joint family property but belonged exclusively to themselves.

Held, the sale was void and Art. 181 of the Limitation Act applied. I.L.R. 48 Mad. 818 followed in preference to I.L.R. 50 Mad. 639. Out of two conflicting views on a question of limitation one which is more favourable to the plaintiff must be preferred.

*K. V. Krishnaswami Iyer* and *N. Arunachalam* for Appellant.

*K. Srinivasan* for Respondent.

K.S.

*Wadsworth, J.* *Nachayammal v. Parvethiammal.*  
31st July, 1940. O.B.P. No. 997 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 3 (ii)—Limited interest of widow in husband's property—If saleable interest.*

The limited interest of a widow in her deceased husband's property is a saleable interest within the meaning of S. 3 (ii) of Madras Act IV of 1938. Clearly a widow has a right to sell her interest and though the sale may be set aside after her death, so long as it is not set aside, it vests the property in the vendee.

*K. Desikachari* for Petitioner.

*N. Vasudeva Rao* for Respondent.

K.S.

*Lakshmana Rao, J.* *In re Vasireddi Sivalinga Prasad.*  
31st July, 1940. Ori.B.C. No. 24 of 1940.  
(Ori.R.P. No. 21 of 1940).

*Penal Code (XLV of 1860), S. 504—Person addressing a meeting and in the course of the speech abusing the complainants—Complainants not present at the meeting—Conviction under S. 504, I.P. Code—Sustainability.*

The accused was an organising secretary of the Andhra Provincial Ryots Association and he addressed a meeting of the ryots and in the course of his speech on the Inam legislation abused the Zamindarini and her agents. But neither the Zamindarini nor her agents were present at the meeting.

*Held*, the conviction of the accused under S. 504, I.P. Code, is unsustainable.

*A. Lakshmayya* for Petitioner.

*The Public Prosecutor (V. L. Ethiraj)* for the Crown.

K.S.

*Pandurang Row and* *Venngopal Pillai and others v.*  
*Abdur Rahman, J.J.* *Thirugnanavalli Ammal.*  
2nd August, 1940. *Appeal No. 338 of 1937.*

*Civil Procedure Code (V. of 1908), O. 2, r. 2 and S. 149—Earlier suit for cancelling a lease in respect of suit properties—Later suit for past mesne profits—Whether barred—C. P. Code, S. 149—Grant of time for payment of deficit Court-fee after claim barred by limitation—Effect.*

After an earlier successful suit for cancelling a certain lease the plaintiffs filed a suit for past mesne profits. It was contended that this suit was barred by C. P. Code, O. 2, r. 2, on the ground that the claim for mesne profits should have been included in the earlier suit inasmuch as it arose out of the same cause of action. In the plaint in the earlier suit the plaintiff had stated that he intended to bring a separate suit in respect of past mesne profits.

*Held*, following I.L.B. 88 Mad. 829 (F.B.) and 51 M.L.J. 252 that the claim for mesne profits need not be included in a suit for recovery of possession of property in respect of which mesne profits are claimed by reason of O. 2, r. 2, C.P. Code.

61 M.L.J. 294 (P.C.) distinguished.

*Held, further*, whatever the reasons for the Courts granting time for payment of deficit Court-fees, the effect of the grant of time, even if it is after the claim is barred by limitation, is that the plaint takes effect as if it had been presented along with the full Court-fee on the date of its first presentation.

51 M.L.J. 90, relied on.

*J. R. Gundappa Rao* for Appellants.

*T. E. Ramabhadrachari* for Respondent.

K.S.

*Bera and Mockett, J.J.* *The Public Prosecutor v. Karuppan.*  
5th August, 1940. *Ori. App. No. 341 of 1940.*

*Indian Penal Code (XLV of 1860), Ss. 303 and 306—Accused stabbing with a pen knife in the chest and thereby causing death—Accused illiterate—If can be presumed to have no knowledge that death will ensue—Proper conviction.*

The accused stabbed the deceased with a penknife in the heart and caused death. The Sessions Judge convicted him only for grievous hurt under S. 306, Indian Penal Code, holding that the accused as an illiterate cannot

be expected to have such knowledge of the human anatomy that the Act committed by him can be safely connected with the knowledge that by such act, death must certainly ensue.

*Held*, (on appeal), there are no human beings so illiterate as not to know that a stab to the heart causes death. When a person voluntarily does an act endangering the life of another and thereby causes his death the offence is clearly one of murder.

M. C. Sridharan for Accused.

K.S.

Wadsworth, J.  
8th August, 1940.

Padmanabhan Nair v. Appu alias Theyyan.  
O.R.P. No. 1157 of 1937.

Civil Procedure Code (V of 1908), 80—Acting *adhikari* attaching crops—Suit against him for recovery of excess amount collected by him when *adhikari* but filed after he ceased to be such officer—Notice under S. 80—Whether necessary.

The notice contemplated by S. 80, C. P. Code, for a suit against a 'public officer' is unnecessary in the case of a suit against an officer who on the date of the suit had ceased to be such officer. Accordingly in a suit (for recovery of excess amounts collected) against an acting *adhikari* who had attached certain properties of the plaintiff when he was so acting, but after he had ceased to be such officer, notice under S. 80, C. P. Code, is not necessary.

S. R. Subramaniam for Petitioner.

K. P. Ramakrishna Aiyar for Respondent.

K.S.

[F.B.]

The Chief Justice, Venkataramana Rao  
and Horvill, JJ.  
18th August, 1940.

Kayambu Pillai v.  
Lakshmi Ammani Ammal.  
S. B. No. 27375 of 1939.

Court-Fees Act (VII of 1870), Art. 1, Sch. II—Dismissal of *pauperis* appeal on default of dispaupered appellant in paying the Court-fee and furnishing security for costs—Review application—Proper Court-fee payable.

In an appeal in *forma pauperis* the appellant was dispaupered and directed to pay the Court-fee for the appeal and security for costs of respondent. On default of payment by the appellant the appeal was dismissed. An application for review of the dismissal order was made stamped with a Court-fee of Rs. 2. The Court-fee examiner raised the objection that the application should be stamped *ad valorem* under Art. 4 of Sch. I as on a memorandum of appeal.

*Held*, the order of dismissal of the appeal for non-payment of Court-fee consequential to the order of dispaupering as well as for the non-furnishing of security under O. 41, r. 10 (2), must be deemed to be an order of dismissal for default and therefore is not a decree under S. 2 (2) of the C. P. Code and therefore a Court-fee of Rs. 2 is the proper Court-fee on a petition for a review of that order under Art. 1 (d), Sch. II of the Court-Fees Act.

S. Sundaresa Aiyar for Appellant.

The Government Pleader (B. Sitarama Rao) for Government.

K.S.

Wadsworth, J. Sundara Reddiar v. Alagappa Chettiar.  
25th July, 1940. O.R.P. No. 15 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), Ss. 19 and 20—Death of judgment-debtor just before expiry of the sixty days time allowed under S. 20 for applying for soaking down—Legal representative—If entitled to file a fresh application for stay under S. 20—Procedure.*

A judgment-debtor died on 4th June, 1938, just before the expiry of the sixty days time allowed under S. 20 of Act IV of 1938 without an application under S. 19. His son was impleaded as legal representative on 19th October, 1938, when he asked for time to oppose the execution. On 14th December, 1938, he filed a fresh application under S. 20.

*Held*, the fresh application did not lie. The son succeeds to the rights and liabilities of his father in the litigation. His father had already exhausted his remedy under S. 20 and by express terms of that section the decree must be executed against him as it stands. The legal representative is subject to the same liability.

T. E. Ramabhadrachariar for Petitioner.

S. Panchanatha Mudaliar for Respondent.

K.S.

Patanjali Sastri, J. Meyappa Chettiar v. Ramaswami Chettiar.  
24th July, 1940. O.R.P. No. 562 of 1937.

*Limitation Act (IX of 1908), Arts. 61 and 180—Stamps for a sale certificate purchased by one of the joint purchasers of property—Suit for contribution—Limitation.*

The claim was for contribution in respect of a half share of the amount spent by the petitioner for purchase of stamps for a sale certificate issued in respect of properties jointly purchased by the petitioner and respondent. The stamps were purchased on 18-2-38 and sale certificate issued by the Court on 20-2-38. The suit was brought on 18-2-36.

*Held*, the cause of action did not arise immediately on the purchase of the stamps. Until the stamps are actually used the petitioner could not claim to recover any part of the purchase-money of the stamps. Art. 61 which presupposes the existence of a cause of action when the payment was made cannot be applicable.

48 M.L.J. 271, applied.

The proper article applicable is 180 and the suit is in time.

V. Ramaswami Aiyar for Petitioner.

A. C. Sampath Aiyangar for Respondent.

K.S.

Wadsworth, J. Venkataswami Nayakkan v. Ramaswami Nayakkan.  
26th July, 1940. A.A.O. No. 210 of 1938.

*Execution—Executing Court—If can question validity of decree—Insolvency of one of the defendants and failure to obtain leave to sue from Insolvency Court—If ground for questioning validity of decree in execution proceedings.*

The executing Court has no power to question the validity of the decree. See 27 Mad. 118 and 28 Mad. 26. The executing Court has no power to question the validity of the decree on the ground of the insolvency of one of the defendants and the failure to obtain leave to sue. It is particularly undesirable to allow a judgment-debtor to raise such a plea where the decree has remained unquestioned since it was passed in 1917 till the execution in 1936.

V. V. Ramadurai for Appellant.

Respondent not represented.

K.S.

N R C

*Patanjali Sastri, J.* - *Nirogi Venkatasubba Rao v. Special Officer, Peddapur Municipality.*  
26th July, 1940.

O.R.P. No. 829 of 1937.

*Indian Contract Act (IX of 1872), S. 65—Chairman of Municipality authorised to undertake a journey to Madras to make certain representations to the Local Government—Sanction and payment of expenses by Council to Chairman—Sanction of Local Government not obtained as required by B. 53, District Municipalities Act—Special officer taking the place of superseded municipality if entitled to claim refund on the ground that contract is invalid or discovered to be invalid.*

A chairman of a Municipality was authorised by the council to undertake a journey to Madras to make certain representations to the Local Government. The travelling expenses were sanctioned and paid. But the sanction of Local Government required by r. 53, District Municipalities Act, was not obtained. The Special Officer of the Municipality after the supersession of the Municipality sued for return of the money under S. 65, Contract Act.

*Held*, S. 65, Contract Act, did not apply to the case as there is no question of any invalid contract or contract discovered to be void. The expenses paid are not liable to be refunded.

*P. V. Rajamannar and K. Subba Rao* for Petitioner.

*K. V. Gopalaswami* for Respondent.

K.S.

*King, J.*  
30th July, 1940.

*Rasappa Pillai v. Palaniandi Pillai and others.*  
A.A.A.O. No. 173 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 8—Applicability—Order setting aside sale on deposit of necessary amount under Civil Procedure Code (V of 1908), O. 21, r. 89—Suit ultimately dismissed—Amount payable by way of restitution—If debt within meaning of Madras Act IV of 1938, S. 8.*

The liability to restore with interest the money deposited by a party under O. 21, r. 89, C.P.C., for setting aside a sale after the decree has been reversed is a "debt" within the meaning of Act IV of 1938 and the provisions of S. 8 of the Act are applicable.

*T. K. Sundararaman* for Appellant.

*B. Sitarama Rao (Government Pleader)* for Respondents.

K.S.

*Venkataramana Rao, J.*  
2nd August, 1940.

*Muddala Rajappala Naidu v. Balasurya Prasada Rao.*  
S.A. No. 685 of 1937.

*Madras Estates Land Act (I of 1908), Ss. 87 and 89—Purchase by landlord—Effect on old patta—Calculation of rent—Principles.*

Once there has been a purchase by the landlord in court auction the old patta ceases to be in force and can no longer be the basis of calculation of rent. The Court before determining what is fair and equitable rent will have to determine what the commutation rate is. If it is not possible to ascertain the commutation rate then the Court can fix a fair and equitable rent.

*B. Jagannadha Das* for Appellant.

*M. S. Ramachandra Rao and D. B. Krishna Rao* for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, J.J.*  
19th August, 1940.

*Rayan Duraiswami Iyengar v. Baghavachariar.*  
O.R.P. No. 1607 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 8 (4)—Open payments made before 1-10-1937—If can be appropriated towards interest by creditor after the debtor has sought relief under the Act.*

Towards a debt due on a promissory note dated 20—4—1925 which itself was in renewal of an earlier promissory note dated 19—4—1926 for Rs. 1,000, the debtor made a payment of Rs. 1,000 on 2—8—1937 and endorsed the payment "towards this pronote".

*Held*, the creditor should not be entitled after the debtor has sought relief under Act IV of 1938 to treat the payment as having been theoretically appropriated towards interest when in fact it was not appropriated at all and the interest outstanding on 1—10—1937 will be wiped out under S. 8 (i) and the whole debt is discharged.

(1940) 1 M.L.J. 895 (P.O.), relied on.

Decision of Horwill, J., in (1940) 1 M.L.J. 235, overruled.

B. Krishna Ayyar for Petitioner.

M. S. Venkataranga Ayyar for Respondent.

K.S.

*Wadsworth and Subbarama Iyer v. Venkatachalapathi*  
*Patanjali Sastri, JJ.* Iyer and others.  
19th August, 1940. O.R.P. No. 513 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 3 (iv) (a)—Simple mortgagee of agricultural land—If an 'agriculturist'.*

A simple mortgagee is a person having a saleable interest in land and so an "agriculturist" within the meaning of the Act.

O. V. Bahuswamy for Petitioner.

K. Vydyanathan for Respondents.

K.S.

*Wadsworth and Periasami Chettiar and another v.*  
*Patanjali Sastri, JJ.* S. A. Ramaswamy Gounder.  
19th August, 1940. O.R.P. No. 653 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 3 (iv) (a), 7 and 19—Simple mortgagee—If "agriculturist"—Puisne mortgagee—If a debtor entitled to have debt scaled down—Decree on appeal—Jurisdiction of trial Court to scale down under S. 19.*

A simple mortgagee is a person having a saleable interest in land and is an agriculturist under S. 3 (iv) (a). O.R.P. No. 513 of 1939, followed.

A puisne mortgagee who was impleaded as a defendant in a suit for sale by a prior mortgagee and against whom a decree was passed giving him a right of redemption of the prior mortgage is a debtor within the meaning of S. 7. Decision of Newsam, J., in (1939) 2 M.L.J. 225, overruled.

A trial Court has jurisdiction to scale down a decree of the appellate Court under S. 19 of the Act.

K. S. Sankara Iyer for Petitioners.

K. Bhashyam Iyengar and T. B. Srinivasan for Respondent.

K.S.

*Wadsworth and Narayanaswami Reddi v. Veeraswami*  
*Patanjali Sastri, JJ.* Reddi and another.  
20th August, 1940. O.R.P. No. 1634 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 3 (iv) Proviso (D)—Owner of shares in more than one estate paying only in the aggregate more than Rs. 500 as peshkash—If included in Proviso (D) to S. 3 (iv).*

S. 3 (iv) Proviso (D) of Act IV of 1938 covers the case of a landholder having shares or portions in respect of more than one estate and paying more than Rs. 500 as peshkash in the aggregate and such a person shall not be deemed to be an "agriculturist" under the Act.

*K. Bhashyam Iyengar and B. Viswanatha Iyer for T. B. Srinivasan for Petitioner.*

*T. M. Krishnaswami Iyer and A. Srinagachariar for Respondents.*  
K.S.

*Wadsworth and  
Patanjali Sastri, JJ.  
20th August, 1940.*

*Anantaramakrishna Iyer v. Sundaram  
Iyer.*

O.R.P. No. 711 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 8 (1)—Appropriation of payments towards interest and costs made before 1—10—1937—If can be reopened under S. 8 (1).*

Appropriations towards interest and costs made before 1—10—1937 cannot be reopened and readjusted under S. 8 (1) of Madras Act IV of 1938. Appropriations made after 1—10—1937 will be available for readjustment towards the principal first under S. 8 (1).

*B. Ramasubbu for K. Venkateswaram for Petitioner.*  
*N. G. Krishna Iyengar for Respondent.*

K.S.

*Wadsworth and  
Patanjali Sastri, JJ.  
20th August, 1940.*

*Periasami Pillai v. Sivathia Pillai.*  
O.R.P. No. 1482 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 3 (ii), Proviso—Burden of proof as to whether a person comes under the exception in the Proviso to S. 3 (ii).*

The initial burden is on the petitioner (the debtor) to prove that he is an agriculturist. Then the burden shifts on the respondent to prove that the debtor falls under any of the Provisos to S. 3 (ii). Again the burden shifts on the petitioner to prove that he does not pay a sum of Rs. 100 as poruppu or the lika.

*A. Sivaswami Ayyar for Petitioner.*  
Respondent not represented.

K.S.

*Wadsworth and  
Patanjali Sastri, JJ.  
20th August, 1940.*

*Itihala Suryanarayanamurthy v.  
Beddi Viramma.*

O.R.P. No. 1602 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), Ss. 8 (1) and 19—Payments after 1—10—1937 towards decree on debt incurred before 1—10—1938 appropriated towards interest and costs—If to be reopened and readjusted under S. 8 (1)—Reappropriation if "refund" within meaning of S. 8 (4).*

Payments were made and appropriated after 1—10—1937 towards costs and interest on a decree on a debt anterior to 1—10—1938. It was contended that the reopening of the appropriations and then reappropriation according to Ss. 7 and 8 (1) will amount to a "refund" within the meaning of S. 8 (4) and therefore not permissible.

*Held*, the appropriations made after 1—10—1937 towards interest due before that date can be reopened and readjusted first towards the costs then interest due from 1—10—1937 and next towards the principal, and that the word "refund" in S. 8 (4) means only repayments in cash and that it is no bar to readjustment of the debt according to S. 8 (1) of the Act.

*K. Binasankaram for Petitioner.*  
*Ch. Raghava Rao for Respondent.*

K.S.

Wadsworth, J.  
23rd July, 1940.

Chandrasekhara Ayyar v. Official Receiver,  
West Tanjore.  
O.R.P. No. 1257 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 3—"Jodi kattubadi poruppu or the like"—If include payments for "kaval", "road-cess" and "water-cess".*

The petitioner admitted possession of eight villages in respect of which he pays as *jodi* Rs. 6-4-0 only, though he pays approximately Rs. 72,889 and Rs. 244 respectively for *kaval* fees, road-cess and water charges. In an application for scaling down a debt by the petitioner claiming to be an agriculturist,

*Held*, in "jodi, kattubadi and poruppu or the like" the words or the like must be taken to denote any other payment in the nature of quit rent on an inam, whatever be the names by which they are denoted and does not include charges for police (*kaval*), for roads, for water and similar dues levied for services rendered by the state or by a local authority. The petitioner is therefore an agriculturist.

S. Panchapagesa Sastri with T. K. Sundararaman for Petitioner.  
K. S. Desikan for Respondent.

K.S.

Patanjali Sastri, J.  
26th July, 1940.

Karnam Syama Rao v. Hanumantha Rao,  
minor by guardian.  
O.R.P. No. 1258 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), Ss. 11 and 19—Compromise decree—Gross amount agreed to be payable in full satisfaction of suit claim and costs—If can be reopened and scaled down—Appropriation towards costs which would have been payable—Permissibility.*

Where parties enter into a compromise agreeing that a certain sum should be payable in full satisfaction of the suit claim and costs without allocating any part of that sum specifically to the costs of the suit, the provisions of Ss. 11 and 19 cannot be invoked by the creditor. The Court has no power in a case of that kind to reopen the compromise, tax the costs that would have been awarded if the suit had succeeded after contest and direct its payment, when the judgment-debtor applies for scaling down a decree under S. 19 of the Act.

K. S. Jayaram for Petitioner.  
A. C. Sampath Ayyangar for Respondent.

K.S.

The Chief Justice and  
Horwath, J.  
26th July, 1940.

Ebrahim Sait v. Mettupalam Narayani  
Bank, Ltd., and others.  
O.S.A. No. 17 of 1939.

*Powers—Construction—Agent of petitioning creditor with authority "to attend to all the affairs and court proceedings"—If confers power to present a petition in insolvency—Presidency Towns Insolvency Act, S. 9 (c)—Earlier attachments continuing for more than three weeks—Later similar act of insolvency—If can be relied on for adjudication.*

The secretary of a banking company was authorized to attend to all the affairs of the Bank including court proceedings relating to the Bank. It was contended that the secretary had no authority to act in insolvency on behalf of the Bank.

*Held*, a petition in insolvency involves proceedings in Court and the secretary had full authority to file a creditor's petition in insolvency on behalf of the Bank.

*Held, further*, that a debtor can commit more than one act of insolvency and even where there is an act of insolvency committed as the result of a previous attachment for more than three weeks there could be a second act of

N. R. C

insolvency of the same nature which can be relied on for adjudicating a debtor.

T. V. Srinivasan for Appellant.

E. B. Krishnan, M. S. Venkatarama Aiyar, M. Krishna Bharathi, R. Karunakaran and U. Lakshmana for Respondents.

K.S.

King, J.  
31st July, 1940.

Mahammad Ibrahim v. Pilli Viraswami.  
O.B.P. No. 886 of 1937.

*Madras Village Courts Act (I of 1889), S. 73—Decree of village court on claim which on the face of it was five years old and barred—If can be set aside by the District Munsif as unjust under S. 73.*

A decree was passed by the Village Court on a claim which was *prima facie* five years old and barred by limitation. The defendant remained *ex parte* and succeeded only by applying himself under S. 73 of the Village Courts Act to the District Munsif and proving before him what he ought to have proved before the Village Court itself.

*Held*, a decree passed upon the uncontradicted assertions of the plaintiff cannot be called unjust but a decree passed in clear defiance of the provisions of the Limitation Act is unjust within the meaning of S. 73 of the Act and must be set aside. O.B.P. No. 64 of 1936, distinguished.

C. M. Kurvilla for Petitioner.

Respondent not represented.

K.S.

Wadsworth, J.  
2nd August, 1940.

Karnam Subramanya Rau v. Pulla Rami Reddi.  
O.B.P. No. 1252 of 1939.

*Practice—Res judicata—Finding on an issue by the presiding judge—If can be altered or reopened and decided by his successor.*

When an issue has been made the subject of a final order by a court, that order cannot be ignored by a succeeding judge nor has the court jurisdiction to alter its own decision except on grounds which would justify a review.

P. O. Parthasarathy Ayyangar for Petitioner.

P. Chandra Reddy for Respondent.

K.S.

Wadsworth, J.  
9th August, 1940.

Gudipati Brahmanandam v. Gudipati Serveswara Row and others.  
O.B.P. No. 1543 of 1937.

*Civil Rules of Practice, r. 183—Sale of attached debt contrary to the rule—Effect on validity of sale.*

There is nothing in r. 183 of the Civil Rules of Practice which would justify the conclusion that a sale of a debt which was attached in execution is void, merely because the court would have been better advised to have realised it by the appointment of a receiver having regard to the terms of r. 183. It can be set aside only by an application and Art. 166 of the Limitation Act will apply.

P. Satyanarayana Rao for Petitioner.

K. Venkatarama Raju for Respondents.

K.S.

Wadsworth, J.  
14th August, 1940.

Chintakrindi Kanakayya v. Thuraga Vasudeva Rao.  
O.B.P. No. 880 of 1940.

*Civil Procedure Code (V of 1908), O. 40, r. 3—Appointment of receiver with consent of parties on certain conditions—Jurisdiction of Court to impose further conditions.*

The consent of parties to the appointment of a receiver on certain conditions does not bind the Court to impose no further conditions. The Court has a jurisdiction whether there be a consent or not, to give its receiver directions contemplated in O. 48, r. 8 of the C. P. Code. And even if the Court's order imposing conditions more onerous than those to which the parties have consented were deemed to be ill advised, it could not be deemed to be without jurisdiction so as to justify interference in revision.

*P. Somasundaram* for Petitioner.

*K. Krishnamoorthi* for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.* *Neelappa Reddi v. Sollamuthu Odayar.*  
C.R.P. No. 113 of 1939.

31st August, 1940.

*Madras Agriculturists Relief Act (IV of 1938), S. 8, Explanation—Scope.*

A promote executed by A was discharged by a promote executed by B to the same creditor. It was contended that this was a renewal of the debt due to the same creditor within the meaning of the explanation to S. 8.

*Held*, the explanation to S. 8 does not cover a case of this kind.

68 L.T. 29 and decision of Somayya, J., in (1939) 2 M.L.J. 809, followed.

*K. Aravamuda Aiyangar* for Petitioner.

*Y. Venkatasubramanyam* for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.* *Ediga Seshamma v. Venkataramana Rao.*  
C.R.P. No. 223 of 1939.

31st August, 1940.

*Madras Agriculturists Relief Act (IV of 1938), S. 8, Explanation—Purchaser of mortgaged property executing fresh mortgage to the mortgagee on date of purchase itself—If same debtor.*

A purchased a mortgaged property and at the same time executed a mortgage in favour of the original mortgagee. It was contended that this mortgage was in renewal of a pre-existing liability.

*Held*, following C.R.P. No. 118 of 1939 that the debtor was not the same and the debt was not in "renewal or inclusion of the earlier mortgage debt".

(1939) 1 M.L.J. 609, approved. (1938) 2 M.L.J. 1068, referred to.

*S. S. Bharadwaj* for Petitioner.

*J. V. Srinivasa Rao* for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.* *Periakaruppan Chettiar v. Marappa Goundan and others.*  
C.R.P. No. 946 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 8 (1)—Payments appropriated by creditor towards interest in his plaint filed before 1—10—1937—If can be reopened.*

In his plaint filed before 1—10—1937 the plaintiff appropriated payments by his debtor, towards interest.

*Held*, these appropriations cannot be ignored for the purpose of S. 8 (1) of the Act, and scaling down must be on the basis of the amount claimed in the plaint as principal.

*M. Krishna Bharathi* for Petitioner.

Respondents not represented.

K.S.

*Wadsworth and Patanjali*  
Sastri, J.  
22nd August, 1940.

Mullapudi Perraju v. Pabbiseti Ramayya.  
O.B.P. No. 882 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), Ss. 8, 18 and 19—*  
*Payment before decree of amount sufficient to discharge debt as scaled*  
*down—Effect—If can be appropriated towards cost.*

Interest outstanding on 1—10—1937 is cancelled and there is due on that day only the principal subject to interest at 6½ per cent. having regard to S. 12. Where a payment sufficient to discharge this scaled down debt is made on 4—8—1938 before the decree, the debt is discharged and the payment cannot be appropriated towards costs under proviso to S. 19 as it is not a payment in respect of the decree. The creditor is entitled to a decree for costs only, with interest thereon at 6 per cent. per annum.

C. V. Dakshinam for Petitioner.

K. Umamaheswaram for Respondent.

K.S.

*The Chief Justice and*  
Horroth, J.  
22nd August, 1940.

Bhide v. Travancore National and Quilon  
Bank, Ltd., by its Liquidators.  
O.S.A. No. 46 of 1939.

*Companies Act (VII of 1913 & 1936), S. 230-A—Application for rescission*  
*of contract on the winding up of company—Maintainability.*

The appellant had entered into a contract with the bank for financing some contract work. After suspension of payment by the bank amounts under the contract, were not advanced.

Held, (reversing the decision of Venkataramana Rao, J., directing the appellant to file a regular suit), that an application under S. 230-A of the Companies Act for rescinding the contract and other reliefs, would lie to the Court which wound up the company and no suit can be filed.

B. Krishnaswami Iyengar, C. R. Pattabhi Ramon and C. V. Nilakantan for Appellant.

C. Krishnaswami Aiyar for Messrs. King and Partridge for the Liquidators.

K.S.

*Wadsworth and Patanjali*  
Sastri, J.  
22nd August, 1940.

Chithapragada Veeraraju v. Chithapragada  
Buchraju.  
O.B.P. No. 603 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), Ss. 9 and 18—Appropriations*  
*towards principal or interest in 1923 and 1924 under a debt decreed*  
*in 1936—If can be reopened and reappropriated under the Act.*

A decree was passed on 26—9—1936 on a mortgage debt of 1920 (which itself was in consolidation of previous debts on promissory notes) for which payments towards "principal and interest" had been made in 1923 and 1924. In an application to scale down the decree,

Held, there was apparently no specific appropriation and the decree has to be scaled down on the basis of the original amounts advanced on the earliest promissory notes. Payments actually appropriated before 1—10—1937 cannot be reopened. But payment not specifically appropriated will be disregarded in calculating the amount of interest outstanding on 1—10—1937 which will be treated as discharged and the balance of the debt will bear interest from 1—10—1937 according to S. 12, *vis.*, at 5 per cent. per annum up to 22—3—1938 and thereafter at the decree rate of 6 per cent. per annum.

M. Appa Rao for Petitioner.

K. Vyanana and K. Bhimasankaram for Respondent.

K.S.

*Wadsworth and  
Patanjali Sastri, JJ.  
28th August, 1940.*

*Doraikkannu Odayari v. Veerasami Padayachi.  
O.R.P. No. 602 of 1939.*

*Madras Agriculturists Relief Act (IV of 1938), S. 8, Explanation—Promote executed by purchaser of hypotheca for balance due under mortgage—If covered by explanation to S. 8—Decree on the promote against purchaser and sons forming joint family—Right of son to relief under the Act.*

A purchaser of a hypotheca executed a promissory note to the mortgagee for the balance due under the mortgage. The mortgagor obtained a decree on the promissory note against the maker and his sons as members of a joint family. In an application by the son for scaling down the decree,

*Held*, when a member of a joint family executes a fresh document for a pre-existing liability binding on the family, but incurred on its behalf by another member such previous debt can be regarded as renewed or included in a fresh document within the meaning of the explanation to S. 8 of the Act as the debtor in each case is the same person, namely, the joint family.

The liability to the plaintiff which the applicant seeks to scale down is not a liability in respect of which a charge is provided under S. 55 (4) of the Transfer of Property Act.

*A. Srirangachariar* for Petitioner.

*S. Swaminatha Ayyar* for *M. S. Venkatarama Ayyar* for Respondent.

K.S.

*King, J.  
26th August, 1940.*

*Kesavan Chettiar v. Pakshi Ramasami Chettiar and others.*

*C.M.S.A. No. 118 of 1939.*

*Limitation Act (IX of 1908), S. 20 (2)—Execution application after three years from final decree for sale on mortgage—Mortgagee under usufructuary mortgage continuing to be in possession of some items of mortgaged property even after decree and receiving rents in lieu of interest—Execution application not saved under S. 20 (2) from bar of limitation.*

An execution application was filed three years after the final decree for sale on a mortgage. The mortgagee whose mortgage was usufructuary and who had been put in possession of some items of the mortgaged properties in lieu of interest continued to receive rents even after the final decree.

*Held*, the receipt of rents could not come under S. 20 (2) as the rights of the mortgagee were regulated by the decree and not by the mortgage and the execution petition is not saved from the bar of limitation.

*K. Bhashyam Iyengar* and *T. B. Srinivasan* for Appellant.

*K. S. Sankara Ayyar* for Respondents.

K.S.

*Wadsworth and Patanjali Sastri, JJ.  
26th August, 1940.*

*A. Raghupathi Iyer v  
Krishnachariar and another.  
C.R.P. No. 1077 of 1940.*

*Madras Agriculturists Relief Act (IV of 1938), S. 8, Explanation—Debt alleged to be in renewal of earlier debt in favour of another creditor benami for plaintiff in suit—Evidence as to benami—Admissibility.*

A mortgage deed was executed on 2nd August 1937, the consideration being mainly a decree obtained by the mother of the creditor on a promissory note dated 17th January, 1932. The debtor claimed that the mother was a benamidar for the creditor and the debt was in renewal of the earlier debt in favour of the same creditor.

*Held*, evidence as to benami is not admissible and the payee and decree-holder in respect of the earlier promissory note and the plaintiff in the mortgage suit cannot be deemed to be the same creditor within the meaning of S. 8 of the Act.

S. V. Venugopalachariar and A. C. S. Chari for Petitioner.  
Ch. Raghava Rao and V. S. Rangarwami Ayyangar for Respondents.  
K. S.

Wadsworth and Patanjali Sastri, JJ.  
28th August, 1940.

Ayipuzha Parvathi Amma v.  
Subramaniam Pattar.  
C.R.P. No. 1600 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 23—Donee from mortgagor of one of the items of mortgaged property—Sale in execution of mortgage decree of all the items of mortgaged property in one lot—Right of the donee to re-open and scale down debt.*

Out of 8 items mortgaged, the mortgagor gifted away one item to his daughter (the petitioner) and sold the other items to a stranger who executed a release deed in respect of those items in favour of the daughter conceding that they were purchased by him benami for her. The mortgagor and his daughter were impleaded in the mortgage suit and a preliminary decree was followed by a final decree for sale on 17th August, 1937, and in execution of that decree the mortgaged properties were sold in one lot on 10th March, 1938. The daughter applied to have the auction sale set aside and the decree scaled down under the Act on 9th April, 1938.

Held, the daughter was entitled to apply under S. 23 of the Act as a subsequent alienee of part of the hypotheca. I.L.R. (1939) Mad. 218, Relied on. The daughter in the circumstances is a judgment-debtor as defined in S. 2 (10) of the C. P. Code. The daughter having perfected her title by the release in her favour is entitled to have the sale of all the items set aside. Even otherwise as the sale was of all the items in one lot, the sale of all the items must be set aside and the debt scaled down.

O. T. G. Nambiar and C. Govindan for Petitioner.  
K. Kuttkrishna Menon for Respondent.

K. S.

Wadsworth and Patanjali Sastri, JJ.  
28th August, 1940.

Karuppan Chettiar v.  
Appaji Naidu and others.  
C.R.P. No. 1186 of 1940.

*Madras Agriculturists Relief Act (IV of 1938), S. 8, Explanation—Original debt evidenced by promissory note of A, along with X and Y—Renewal by A, along with B and C—If debt in renewal of or inclusion in a fresh document in favour of some creditor—Debt of joint family—Pronote of one member—Renewal by another member—Effect.*

Renewal of a debt or its inclusion in a fresh document must be by the same debtor and when a member of a joint Hindu family executes a fresh document for a pre-existing liability binding on the family but incurred on its behalf by another member, such previous debt can be regarded as renewed or included in a fresh document within the meaning of the explanation to S. 8 of the Act as the debtor in each case is the same person, namely, the joint family, vide S. 3 (4) of the Act.

It is not necessary for the application of explanation to S. 8 that the parties to the earlier and later debts should be absolutely identical. There may be cases in which a debt due jointly and severally from A and B is included in a fresh document executed by A alone or cases in which a debt solely due by A is included in a fresh document executed by A and B. The explanation to S. 8 of the Act is applicable to cases of that sort when the applicant for scaling down is a debtor under both the instruments. Even if the later transaction in such cases cannot be said to be a "renewal" in the strict sense of the term, it would amount to an inclusion of the pre-existing liability of the common debtor in the later document.

A. C. Sampath Ayyangar for Petitioner.  
Respondents not represented.

K.S.

*Wadsworth, J.* Gnanayutha Nadar v. Ponnuswamy Nadar.  
 31st July, 1940. O.R.P. No. 707 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 19—Court which passed the decree having a lower pecuniary jurisdiction at the time of application—Jurisdiction to scale down its decree.*

Under S. 19 of Madras Act IV of 1938, it is the Court which passed the decree which has jurisdiction to amend it. This rule applies even if the Small Cause Court which passed the decree has a lower pecuniary jurisdiction at the time of the scaling down petition than it had at the time of the decree. The jurisdiction is conferred solely by S. 19 of the Act which does not impose any pecuniary limitations.

*K. S. Desikan* for Petitioner.

*J. S. Vedamontakam* for Respondent.

K.S.

*King, J.* Bapalal & Co. v. Krishnaswami Iyer.  
 2nd August, 1940. C.C.C.A. No. 52 of 1939.

*Defamation—Letter to Police Inspector charging criminal breach of trust against plaintiff—If absolutely privileged as sent to protect defendant's interest.*

The plaintiff took some diamonds on approval in April, 1936. The defendant presented an invoice for its cost on 25th May and when by September 27th the diamonds had not been paid for, the defendant sent a letter to the Inspector of Police and the plaintiff claimed the letter to be defamatory as being equivalent to a charge against him of criminal breach of trust. Defendant claimed privilege.

*Held*, a complaint to a police officer from its very nature as a statement which the complainant is prepared later, if called upon to do so, to substantiate upon oath, is absolutely privileged. Case law discussed.

*V. C. Gopalaratnam* for Appellant.

*N. Panchapagesa Ayyar* for Respondent.

K. S.

*Chief Justice and Horwill, J.* Gopalaswami Goundar v.  
 5th August, 1940. Krishnaswami Goundar.  
 O.S.A. No. 26 of 1939.

*Companies Act (VII of 1913), S. 235—Officer of company—If can be ordered to deliver books of the company in his possession to the liquidators.*

Where books of a company, which must have some value are found to be in the possession of the manager of the company the Court has power to order them to be delivered to the liquidator and it is not necessary to pass an order for payment of a specified amount in default of delivery of such property.

*P. N. Sundararajan and D. Noronha* for Appellant.

*R. Venkataraman* for Respondent.

K. S.

*Wadsworth, J.* Periyana Nadar v. Sivasamy Iyer.  
 8th August, 1940. C.R.P. No. 1483 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), Ss. 8 and 9—Liability on mortgage as security for future instalments of chit fund—Liability whether incurred on date of mortgage or date of default.*

In respect of a mortgage executed before 1st October, 1932, as security for future instalments of a chit fund, by the mortgagor who had taken the amount of the chit in auction, default in payment of instalment was committed only after 1st October, 1932. In an application to scale down the debt,

*Held*, it is a present liability created on the date of the mortgage, even though it is to be discharged by future payments. 65 M.L.J. 29 at 36, referred to.

The debt has to be scaled down under S. 8.

K. S. Desikan for Petitioner.

T. S. Vaidyanatha Ayyar for Respondent.

K. S.

Horwill, J.  
9th August, 1940.

Sree. Rajah Bommadevara Venkatarayulu  
Naidu Bahadur, Zamindar v. Katta Laksh-  
ngudu.

O.B.Ps. Nos. 1420, etc. of 1938.

*Madras Estates Land Act (I of 1908), S. 25—Promotes executed by ryots to stop the filing of second appeals against them by the Zamindar who was unsuccessful in both the lower courts—If without consideration—Whether unenforceable by reason of S. 25 of Estates Land Act.*

Ryots had encroached on neighbouring lands of the Zamindar within 12 years of filing of suits for eviction. The suits were decided in favour of the ryots and the appeals also were dismissed on the ground that the ryots had been in long possession and the encroachment was not proved. Before the time for filing a second appeal had elapsed the ryots entered into an agreement with the landlord and executed certain promissory notes in favour of the Zamindar. In a suit on the promotes, it was contended that there was no consideration and also that payments under it was in the nature of premia which could not be demanded of the ryots after they had been admitted into possession, as it is forbidden under S. 25 of the Madras Estates Land Act.

*Held*, the forbearance to file the second appeal was good consideration for the suit promissory notes. But S. 25 of the Estates Land Act has no application here at all as the amounts which the ryots agreed to pay under the promissory notes are not premia at all but amounts payable to the landlord by way of settlement of their disputes. The promissory notes are therefore enforceable.

P. Somasundaram for Petitioner.

Respondent not represented.

K.S.

King, J.  
13th August, 1940.

Sanampudi Kothandaramayya v. Gurrala  
Venkataraddi.

A.A.O. No. 306 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), Ss. 3 (c) and 8—'Creditor'—If includes successive assignees of original creditor.*

The renewal of a debt to the assignee of the original creditor is a renewal to the "same" creditor within the meaning of the Explanation to S. 8 of Madras Act IV of 1938. This definition of "creditor" extends not only to a first assignee but to any subsequent assignee also. The ultimate assignee has, in respect of the debt succeeded to, the legal right of the original creditor in exactly the same sense as the first assignee has.

K. Kotayya for Appellant.

P. Satyanarayana Rao for Respondent.

K.S.

King, J.  
14th August, 1940.

Baju Mudali alias Vinayaka Mudali v.  
Chinnaraju Naidu.

A.A.O. No. 150 of 1939.

*Civil Procedure Code (V of 1908), O. 43, r. 1, cl. (b)—Word "suit" if includes "appeals".*

• In an appeal under O. 43, r. 1, cl. (b) against an order of the lower appellate Court, refusing to set aside the abatement of an appeal on the death of the

appellant, a preliminary objection was raised that no appeal lies under O. 43, r. 1, cl. (k) on the ground that the word 'suit' in the rule necessarily must exclude the word 'appeal'.

*Held*, the word "suit" includes 'appeals' (vide O. 22, r. 9 as interpreted by r. 11).

A.L.R. 1929 Cal. 582, not followed.

View of the Patna High Court preferred. [Vide 17 P. 84=A.L.R. 1928 P. 125; 1925 P. 162.]

A. C. Sampath Aiyangar for Appellant.

Ch. Baghaoo Rao for Respondent.

K.S.

King, J.  
14th August, 1940.

Srinivasachariar v. Conjeevaram Hodgsonpet  
Dharmarakshana Nidhi, Ltd.

C.R.P. No. 1841 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 10 (2) (iii)—Applicability—Liability to 'public company' as defined in Companies Act—Rate of interest together with default interest exceeding 9 per cent.—Benefits under Act, if available to debtor.*

In respect of a mortgage loan to a Nidhi, the interest stipulated was 6¼ per cent. payable every month. The bond also provided for default interest in case the interest and certain subscriptions to the Nidhi were not paid on due dates. In respect of the transaction it was found that towards a sum of Rs. 1,500, borrowed in February, 1927, a sum of Rs. 1,396-3-3 had been credited as part payment and the balance of Rs. 807-13-2 was sued for on closing of accounts in March, 1932. This was due to default interest imposed under the contract for default in payment of interest and subscriptions. The actual payments worked out at more than 9 per cent. per annum interest though the primary rate of interest was only 6¼ per cent. In an application for scaling down,

*Held*, as the interest works out at more than 9 per cent. per annum, S. 10 (2) (iii) of the Act cannot apply. The debtor can claim to have the debt scaled down under S. 8 of the Act. When money is borrowed and a larger sum is repaid the excess over principal must be treated as interest.

D. Ramaswami Aiyangar for Petitioner.

M. E. Rajagopalachari for Respondent.

K. S.

Wadsworth, J.  
16th August, 1940.

Kannabhiran Pillai v. Govindaswami Pillai.  
C.R.P. No. 903 of 1940.

*Madras Agriculturists Relief Act (IV of 1938), S. 19—Appeal after Act came into force declaring a liability for the first time—Appellate judgment reserving debtor's right to apply under Act when there was no formal application before him—Effect on debtor's right to apply under the Act—Procedure.*

An appeal was filed after Act IV of 1938 came into force against a dismissal of a suit before the Act came into force. But there was no application for scaling down before the appellate Court. But the appellate judgment reserved the defendant's right to apply for relief under Act IV of 1938. This reservation was not included in the appellate decree. Thereafter the petitioner applied to the trial Court to scale down the appellate decree under S. 19 of the Act.

*Held*, a decree passed after the Act came into force cannot be scaled down. *Etayya v. Punnayya*, (1940) 2 M.L.J. 202, followed.

*Held*, further, when a liability is being declared in the appellate Court's decree for the first time and a plea is open to the defendant under the Madras Act (IV of 1938), there should be a written application raising this plea before the appellate Court and on such application the appellate Court should either

give its own decision or reserve in its decree the right to have the matter decided by the Court below. But in the absence of reservation in the appellate decree, the proper course for the defendant is to have the appellate decree brought in accordance with the judgment embodying a direction to the trial Court to deal with the application for relief under Act IV of 1938.

*A. V. Viswanatha Sastri and S. Amudachari for Petitioner.*

*K. V. Srinivasa Aiyar for Respondent.*

K.S.

*Patanjali Sastri, J.*  
16th August, 1940.

*Kona Tirumala Reddi v. Balireddigari Anki Reddi.*

O.B.P. No. 78 of 1938.

*Civil Procedure Code (V of 1908), O. 21, r. 17 (1) and (4)—Admission of execution petition—Rejection of petition under O. 21, r. 17 (1)—Material irregularity.*

Where an execution petition had been admitted and the proceedings had gone forward far beyond the admission stage, the execution should be ordered subject of course to objections like limitation *res judicata*, etc., to the executability of the decree. But it is a material irregularity to reject the petition under O. 21, r. 17 (1).

*P. Okandra Reddi for Petitioner.*

*Kasturi Seshagiri Rao for Respondent.*

K.S.

*Wadsworth and Patanjali Sastri, JJ.*  
19th August, 1940.

*Singarachariar v Pappathi Ammal.*  
C.R.P. No. 656 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 3 (ii) (a)—Vendors lien—If saleable interest in land.*

The holder of a vendor's lien in agricultural land has a saleable interest in land and is qualified to be an agriculturist under S. 3 (ii) (a) of Madras Act IV of 1938. *Decision in C.R.P. No. 513 of 1939, applied.*

*K. S. Desikan and K. Ramon for Petitioner.*

*C. S. Rama Rao Sahib and A. Sundaram Aiyar for Respondents.*

K. S.

*Wadsworth and Patanjali Sastri, JJ.*  
21st August, 1940.

*Varadarajan Pillai v. Krishnamurthi.*  
O.B.P. No. 1088 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 8, Expl. and S. 19—Mortgage—Promissory note for interest accrued—Decree on the note—Application for scaling down of debt—Note whether a renewal of debt in favour of 'some creditors'.*

A mortgage was executed for about Rs. 10,000. Some time later but before 1-10-32 a promissory note was executed by the mortgagor in favour of the son of the mortgagor for interest then due. A decree was obtained on the promissory note and in (1939) 1 M.L.J. 68 (affirmed in L.P.A. 100 of 1938) the objection of the debtor that the said decree could not be executed against the mortgaged properties under O. 84, r. 14, C.P.C., was overruled. Then he applied under S. 19 for scaling down the decree debt, in accordance with S. 8 of the Act. He contended that as the promissory note was executed in respect of interest due on the mortgage and in favour of the sons of the mortgagor it must be deemed to be a renewal of the earlier debt in favour of the 'same creditor' within the meaning of the explanation to S. 8 of the Act, and hence it must be deemed to have been discharged.

*Held*, (1) the promissory note was a renewal of the earlier mortgage debt;

(2) in regard to decrees based on promissory note, it is not permissible to contend that the decree-holder is a benamidar for other persons.

• (1939) 2 M.L.J. 745, dissented from.

(8) the mortgagee and the decree-holder on the promissory note are not the 'same creditors' within the meaning of the explanation to S. 8 of the Act.

(1989) 2 M.L.J. (N.B.C.) 77, dissented from.

B. Desikan for Petitioner.

T. R. Srinivasan for Respondent.

K.O.

Wadsworth and Patanjali Sastri, JJ. Palani Goundan v. Muthuswami Goundan  
 aka Avanasali Goundan.  
 26th August, 1940. C.B.P. No. 1723 of 1938.

Madras Agriculturists Relief Act (IV of 1938), Ss. 11 and 19—Decree for costs—Liability to be scaled down.

There is nothing in the Act which excludes from the scaling down operation interest on costs awarded by decrees. The sections dealing with costs are Ss. 11 and 19. When there is a decree for costs the same forms part of a decree sought to be scaled down under S. 19, and the provisions of the decree relating to interest on costs should be amended by the process laid down in Ss. 8 and 9.

S. Ramachandra Aiyar for M. Krishna Bharathi for Petitioner.

A. C. Sampath Ayyangar for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ. Suryanarayana v. Viswanadham.  
 26th August, 1940. C.R.P. No. 331 of 1939.

Madras Agriculturists Relief Act (IV of 1938), Ss. 8 and 19—Hindu joint family—Promissory note falling to share of one member—Renewals in his favour—Debtor summoning account books of the joint family and notes prior to partition—Whether creditor can refuse to produce.

Where a creditor becomes entitled to a promissory note belonging to a joint Hindu family at a partition with his other coparceners and fresh promissory notes are executed in his own favour by the debtor, he cannot content himself with producing the promissory notes executed in his favour alone and is bound to produce, if available, the promissory notes anterior to the date of partition as also the account books of the joint family, to enable the debtor to establish a claim to relief under Madras Agriculturists' Relief Act.

W. S. Krishnaswami Naidu for Petitioner.

K. Bhinasonkaram for Respondent.

K. S.

Wadsworth and Patanjali Sastri, JJ. Poovanalingam Pillai v. Nagarathnam Pillai  
 and others.

28th August, 1940. C.B.P. No. 1733 of 1939.

Madras Agriculturists Relief Act (IV of 1938), Ss. 8, 9 and 19—Promotee of 23-1-1924 endorsed to plaintiff on 28-1-1933—Liability of the endorser to plaintiff—If can be treated as debt incurred on original promissory note.

In a suit against the endorser of a promissory note of 23rd January, 1924, which was endorsed to the plaintiff on 28-1-1933, a decree was passed against both. The endorser applied for scaling down.

Held, the liability of the endorser was a personal liability the basis of which was his endorsement though the quantum of liability was the original debt of the pre-existing promissory note and the debt is one incurred after 1-10-1932 and must be scaled down under S. 9 of the Act.

I.L.R. (1939) Mad. 218, distinguished.

V. Ramaswami Ayyar for Petitioner.

K. V. Srinivasan Ayyar for Respondents.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
29th August, 1940.

Puranam Yegnanarayana v.  
Desiboyana Venkatayya.  
C.R.P. No. 346 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 10 (2) (ii)—Payment of price and execution of sale deed in favour of X—Agreement by X before registration to have the land conveyed by the vendor to Y direct—Y paying cash and executing a promissory note to X—Registered sale executed by vendor in favour of Y—Y executing a mortgage next day in favour of X to cover the amount due on the promissory note—Liability under—If excluded by S. 10 (2) (ii) of Act IV of 1938.*

A sale deed in respect of land was executed in favour of X who paid the price to the vendor. But before the registration of the sale deed X entered into an agreement to have the land conveyed by the vendor to Y direct. Accordingly Y paid some cash and executed a promissory note to X. The sale deed in favour of Y was duly registered and the next day Y executed a mortgage in favour of X to cover the amount due on the promissory note executed the previous day. An application to scale down this debt was resisted on the ground that this was a liability excluded by S. 10 (2) (ii) of Act IV of 1938.

*Held*, X was not the seller of the property for he had no interest which he could convey. The title remained with the vendor at the time of the transfer to Y and though the vendor was under an obligation to X that obligation did not have the effect of vesting any title in the petitioner. X cannot therefore be regarded as a seller and the amount due from Y will not carry any charge such as if provided in S. 55 (4) (b) of the Transfer of Property Act.

59 Mad. 910 (P.C.) and 50 Mad. 193 distinguished.

The liability therefore is not excluded from the scaling down provisions by the operation of S. 10 (2) (ii) of Act IV of 1938.

V. S. Narasimhachar for Petitioner.

P. Satyanarayana Rao for Respondent.

K. S.

Wadsworth and Patanjali  
Sastri, JJ.  
30th August, 1940.

Sevugan Chettiar v. Ranganatham  
Mudaliar.  
C.R.P. No. 1756 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), Ss. 8 and 12—Debt scaled down under S. 8 (5)—From what date to carry interest.*

A debt was contracted on 14th September, 1932 and the decree thereon was passed on 21-12-1936. It was scaled down to Rs. 298-14-11 as being the amount which was short of twice the amount of the principal.

*Held*, reading S. 8 as a whole, the date mentioned in sub-S. (1) is the date up to which all debts falling under that section have to be scaled down and the balance due after scaling down should carry interest from 1-10-1937 at the rate mentioned in S. 12 (here the decretal rate of 6 per cent. per annum).

T. S. Vaidyanatha Ayyar for Petitioner.

V. S. Rangachari for Respondent.

K.S.

Wadsworth, J.  
1st August, 1940.

Veeramuthu Padayachi v. Sivasankara Mudaliar  
and others.

C.R.P. No. 1104 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), Ss. 19 and 20—Stay of execution for two months—If extends 60 days period within which petition under S. 19 may be filed—Order if revisable.*

The error of the District Munsif in disposing of the stay application under S. 20 by noting that execution is stayed for two months will not extend the period from 60 days to two months, within which an application under S. 19 may be filed. Such error though a ground for review is not a ground for revision.

K. S. Desikan for Petitioner.

K. Narasimha Aiyangar and G. N. Chari for Respondents.

K. S.

Patanjali Sastri, J.  
1st August, 1940.

Sankaranarayana Iyer v. Paramasivam Pillai.  
C.R.P. No. 710 of 1937.

*Civil Procedure Code (V of 1908), S. 55 (4)—Security bond under—Surety—If entitled to be released from his bond at his pleasure.*

A security bond, in conformity with S. 55 (4) of the Code, provided that the security deposited by the surety should be realised if the judgment-debtor did not apply to be declared an insolvent within one month or did not appear when called upon to do so in the proceedings on such application or in execution of the decree. After the judgment-debtor applied to be, and was adjudged an insolvent and when those proceedings were still pending, the surety applied to be discharged offering to produce the judgment-debtor, as he did not like to continue as surety any longer.

Held, a person who becomes a surety under S. 55 (4), C. P. Code, cannot claim to be released from his obligation at his pleasure.

28 Mad. 161 applied; 1934 Lah. 962 dissented from; 1935 Mad. 543 referred.

R. Rannamurthi Aiyar for Petitioner.

Respondent not represented.

K. S.

Burn and Mockett, JJ.  
7th August, 1940.

Sutapilli Venkataswami v.  
Sutapilli Ramamurthi.  
A.A.O. No. 369 of 1938.

*Civil Procedure Code (V of 1908), S. 39 and O. 21, r. 5—Court to which decree is transferred for execution—Absence of application by decree-holders to Court, which passed decree and absence of certificate of partial execution or non-execution—Jurisdiction of transferee Court to execute.*

In 1922 the territorial jurisdiction over the properties against which execution was sought was transferred to the District Court, Vizagapatam. In 1935 or 1936, the jurisdiction was again transferred from District Court, Vizagapatam, to Sub-Court, Chicacole. In July, 1933, an execution petition was filed in the Sub-Court, Vizagapatam, for attachment and sale of properties then situate within that Court's jurisdiction. There was however no application for transfer of decree to the proper Court for execution. In 1935, the decree-holder filed an original petition to the District Court, Vizagapatam requesting the District Judge to withdraw the execution petition of 1933 to the file of the District Court, which at that time had jurisdiction over the properties. But before the District Judge passed orders he ceased to have jurisdiction and so the application was dismissed by the District Judge. On 20th July, 1936, the Sub-Judge, Vizagapatam, *suo motu*, ordered the records in the Execution Petition to be sent to Sub-Court, Chicacole, for execution. At Chicacole the Execution Petition was given a new number.

N R C

The judgment-debtors took objection to the jurisdiction of the Court to proceed with the execution.

*Held*, where a decree is sent *suo motu* by the Court which passed the decree to another Court for execution (the other Court not being a subordinate Court) the transferee Court has no jurisdiction to execute the decree in the absence of an application from decree-holders for such transfer and in the absence of certificate of partial execution or non-execution from the Court which passed the decree.

Kasturi Seshagiri Rao for Appellant.

V. Govindarajachari for Respondent.

K. S.

The Chief Justice and Horwill, J.  
16th August, 1940.

Pachiammal v. The Hindustan  
Co-operative Insurance Society, Ltd.  
O.S.A. No. 12 of 1939.

*Letters Patent, Cl. 12—Life Insurance Company with Head Office at Calcutta—Branch Office organising business at Madras—Whether the company "carries on business" at Madras.*

A life insurance policy was effected in the Chingleput District with the respondent company who had their Head Office at Calcutta (where alone contracts were concluded and payments were directed to be made) and a Branch Office at Madras which had a large establishment and did considerable business in canvassing policies of insurance. A suit under a policy of insurance was filed at Madras.

*Held* (affirming the decision of Mockett, J.), that the company could not be held to carry on business at Madras.

English and Indian Law reviewed.

The Advocate-General (Sir A. Krishnaswami Aiyar) and K. S. Rajagopala Aiyangar for Appellant.

T. R. Venkatarama Sastry, A. V. Seshayya and S. Ramachandra Aiyar for Respondents.

K. S.

Patanjali Sastri, J.  
16th August, 1940.

Venkatachalam Chettiar v. Subramanian  
Chettiar.  
O.R.P. No. 77 of 1938.

*Hindu Law—Junior members of family managing business and incurring debts under power of attorney—When personally liable.*

Unless the evidence leads to the inference that a junior member of a joint family became a partner in the business of his father conducted by him under a power of attorney he cannot be made personally liable for debts contracted under the power of attorney.

(1938) 2 M.L.J. 944 and (1940) 1 M.L.J. 469, referred to.

C. Padmanabha Aiyangar for Petitioner.

N. Viswanatha Aiyar and N. V. Nagaraja Aiyar for Respondent.

K.S.

Horwill, J.  
16th August, 1940.

Bappanna Bakminamma v. Maganti Venkata  
Ramdas.  
O.R.P. No. 1673 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 4 (c)—Applicability—Registered society formed under Societies Registration Act—If corporation concluded from operation of Act IV of 1938.*

A society formed under the Societies Registration Act is a corporation and a debt due to such a society cannot be scaled down.

D. Sathyaprakasa Rao for Petitioner.

A. Lakshmayya for Respondent.

K.S.

*The Chief Justice and Horwill, J.*  
20th August, 1940.

The State Aided Bank of Travancore,  
Ltd. v. The Indian Bank, Ltd.  
O.S.A. No. 54 of 1938.

*Government promissory notes—Transferable by mere endorsement—Notes endorsed to broker—Bona fide holder for value from broker—Rights.*

Brokers used the securities of a constituent for the purpose of securing their overdraft. The Government promissory notes were endorsed in blank and the respondent Bank advanced moneys on them.

*Held*, the brokers were to be regarded as holders in due course and the respondent Bank who took them in good faith and for valuable consideration obtained a valid title though the brokers had no title. A letter accompanying the deposit of the notes with the respondents stating that they were "received from the chairman of the State Aided Bank" did not put the respondents on enquiry.

C. Krishnaswami Aiyar instructed by King and Partridge for Appellants.

The Advocate-General (Sir A. Krishnaswami Aiyar), S. Panchapakesa Sastri and K. R. Krishnaswami for Respondent.

K. S.

*King J.*  
20th August, 1940.

Maharaja of Cochin v. Thupran.  
A.A.O. No. 68 of 1939.

*Res judicata—Applicability to execution proceedings—Order for sale in execution and proclamation—Claimant objecting to sale of item—Failure to substantiate at hearing—Final order for sale—Subsequent application to exclude property from sale—Barred by Res judicata.*

Sale was ordered and notice of the proclamation of sale was issued under O. 21, r. 66 to the respondent (a claimant) who filed objections contending that the site in question was not included in the boundaries and that respondent had to be paid for buildings on the site as improvements. As respondent made no attempt to substantiate his contentions the sale was ordered to be held on 27th February 1935. There was no sale on that day and after a fresh proclamation 5th June was fixed for sale. On 4th June, 1935, the respondent applied under S. 47, C. P. Code, for an order excluding the property in dispute from the sale.

*Held*, the application is barred by res judicata.

V. Radhakrishnappa and K. P. Ramakrishna Aiyar for Appellant.

B. Paker for Respondent.

K. S.

*King, J.*  
22nd August, 1940.

Puligada Venkatasubba Rao v. Yellapragada  
Sivaramayya.  
A.A.O. No. 90 of 1939.

*Madras Hindu Religious Endowments Act, S. 73—"Excepted temple"—Scheme for administration—Jurisdiction to frame.*

S. 73 must be strictly construed. In spite of the amendments to the section consequent on 57 Mad. 315 and 57 Mad. 362 enlarging jurisdiction it still does not include any suit to settle a scheme. The reason appears to be obvious, *viz.*, that provision has already been made for the framing of schemes in the case of excepted temples by Ss. 62, 63 and 65 of the Act.

V. Rangachari for Appellant.

P. Somasundaram for Respondent.

K. S.

*Pondrang Row and Abdur Rahman, JJ.*  
23rd August, 1940.

*Arunagiri Mudali v.*  
*Radhakrishna Aiyar.*  
App. No. 254 of 1937.

*Suit on mortgage—First mortgagee purchasing a part of the hypotheca in execution of decree on puisne mortgage in his own favour—Rights of parties.*

A first mortgagee who had become a purchaser of a part of the hypotheca in Court sale in execution of a decree on a puisne mortgage in his own favour, filed a suit for the full mortgage amount due on his first mortgage against the other items of property. The defendants pleaded that they were liable to pay only proportionate part of the amount due as the properties purchased by the mortgagee would themselves be liable to contribute rateably, and claimed that the value of the properties as on the date of the mortgage must be taken as the basis for working out the ratio. The plaintiff contended that in any event the value as on the date of purchase should be taken, as a mortgagee would be entitled to the benefit of the subsequent improvements on the hypotheca which will be an accretion to the security.

*Held*, that the accretion only augmented the security and did not affect the quantum of the amount claimable by the plaintiff.

*Held, further*, that though S. 82 of the Transfer of Property Act did not directly apply, as this is not a suit for contribution, still the right of parties should be adjusted in the light of the principles underlying S. 82.

43 Mad. 372 (F.B.) followed.

*Held, also*, that for the purpose of calculating the proportionate liability the value of the property as on the date of mortgage should be taken.

*C. Padmanabha Aiyangar* for Appellant.

*S. Panchapakesa Sastriar, V. N. Srinivasa Rao and T. E. Ramabhadra-chariar* for Respondent.

K. S.

*Patanjali Sastri, J.*  
30th August, 1940.

*Subbayya Nadar v. Anjaneyulu.*  
C.R.P. Nos. 861 and 1184 of 1937.

*Civil Procedure Code (V of 1908), O. 44, r. 1—Application for leave to appeal in forma pauperis—If can be rejected without hearing the applicant or giving him an opportunity of being heard.*

An application for leave to appeal in *forma pauperis* cannot be rejected without hearing the applicant or giving him an opportunity of being heard. Case-law discussed.

The reference in O. 44, r. 1, to a 'perusal' by the Court of the documents specified is not sufficient to justify a departure from the ordinary *curias curiae*.

*K. Umamaheswaram* for Petitioner.

*K. Kuppuswami* for Respondent.

K. S.

*Wadsworth and Patanjali Sastri, JJ.*  
3rd September, 1940.

*Soolapani Moopil Variar v.*  
*Vayankara Thekka Vettil Veloor.*  
C.R.P. No. 611 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 3 (ii), Proviso D and S. 15—Kanom—Suit for redemption—Kanom held by tarwad which was a jenni paying more than Rs. 500 as land revenue at the time of suit—Subsequent partition assigning kanom right to one tavazi which paid less than Rs. 500 as land revenue—Such tavazhi entitled to benefit of S. 15 of Act IV of 1938.*

After a suit for redemption of a kanom held by a tarwad which was a jenni paying more than Rs. 500 as land revenue there was a partition by

which the kanom was allotted to one *tavashi* which paid less than Rs. 500 as land revenue. In an application for scaling down by the *tavashi*,

*Held*, the *tavashi* was under a liability to pay the rent such as would entitle it to claim the benefits of S 15 of Act IV of 1938.

I.L.R. 1939 Mad. 218 followed.

(1940) 2 M.L.J. 451 referred to.

On payment of the arrears of rent as scaled down the *tavashi* is entitled to the benefits under Ss. 22 to 24 of the Malabar Tenancy Act.

P. Govinda Menon for Petitioner.

A. P. Kuttisankara Menon for Respondent.

K. S.

*The Chief Justice and Horwill, J.*  
3rd September, 1940.

Nedungadi Bank, Ltd., Madras  
v. Doraikannu Ammal.  
O.S.A. No. 47 of 1939.

*Surety—Mortgage by surety for overdraft current account of principal—If discharged by earliest payments by principal debtor—Rule in Clayton's case—Applicability.*

Where on the facts, the mortgage by a surety is a continuing guarantee enforceable against the ultimate balance due on an overdraft current account, the rule in *Clayton's case*, is not applicable and the mortgage by the surety cannot be deemed to have been discharged by the earliest payments made by the debtor.

K. Rajah Ayyar, V. C. Veeraraghavaachariar and P. S. Ramaswami Iyengar for Appellants.

C. Padmanabha Iyengar and T. V. Ramanathan for Respondent.

K.S.

*King, J.*  
3rd September, 1940.

Ramanathan Chettiar *akas* Krishna Chettiar v.  
Kuppan Chettiar *akas* Ranganathan Chettiar.  
O.M.S.A. No. 41 of 1939.

*Civil Procedure Code (V of 1908), O. 21, r. 2—Application for entering satisfaction—If can be withdrawn by the decree-holder.*

There is nothing in O. 21, r. 2, preventing the Court from allowing a decree-holder to withdraw his application for recording satisfaction of the decree so long as satisfaction had not been recorded by the Court.

T. M. Krishnaswami Aiyar and T. S. Venkatarama Aiyar for Appellant.

S. Panchapagesa Sastri and P. J. Kuppanna Rao for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*  
4th September, 1940.

Varadarajaperumal Pillai v. Palanimuthu  
Goundan.  
O.B.P. No. 1679 of 1938 and O.M.S.A. No. 239  
of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 10 (2) (4)—Promissory note executed for balance of purchase price of land—Indorsee of promissory note—Liability—If excluded by S. 10 (2) (4) of the Act as one for which a charge is provided by S. 55 (iv) (b) of the Transfer of Property Act.*

In February, 1923, a promissory note was executed for the balance of purchase price of certain lands. This promissory note was twice renewed and the last renewed note of 1932 was assigned in 1936 to the plaintiff by endorsement. The plaintiff obtained a decree on the promissory note. In an application for scaling down this debt the question arose whether S. 10 (2) (4) of Act IV of 1938 excluded the operation of the scaling down provisions to the liability as one in respect of which a charge was provided under S. 55 (iv) (b) of the Transfer of Property Act.

(Assuming that 44 Mad. 965 is correct, though there is some conflict of authority.)

*Held*, that the intention of the Legislature was to specify those classes of liabilities in respect of which the scaling down provisions of Act IV of 1938 were not to operate and that the exclusion of liabilities of these categories was not to depend on the actual subsistence of the charge but on the question whether in the beginning the liability was one belonging to that category in respect of which the Transfer of Property Act provided a charge. The applicability of S. 10 (B) (iv) of Act IV of 1938 is not affected by the assignment of this liability.

V. Ganapathi Ayyah for Petitioner.

S. S. Ramachandra Ayyar for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
4th September, 1940.

Amad Koya v. Appu and another.

C.R.P. No. 1632 of 1938, etc.

*Madras Agriculturists Relief Act (IV of 1938), S. 15—Arrears of rent for faslis prior to 1345 due from tenant assigned by jenmi to third person—If can be deemed to be discharged by tenant depositing rent for faslis 1346 and 1347—Malabar Tenancy Act, S. 3 (k) and (j)—‘Jenmi’ or ‘Intermediary’—If includes assignee of right to collect rents.*

Under S. 15 of Act IV of 1938 only arrears of rent payable to a jenmi or intermediary could be deemed to be discharged by depositing the rent for faslis 1346 and 1347 but the liability to an assignee of such arrears of rent could not be scaled down. The words ‘jenmi’ and ‘intermediary’ in S. 3 (k) and (j) of the Malabar Tenancy Act do not include an assignee of the right to collect rents though under the corresponding provision S. 3 (5) of Madras Estates Land Act the term ‘landholder’ does include a person entitled to collect.

K. Kuttibrishma Menon for Petitioner.

K. P. Ramon Menon for Respondents.

K. S.

Lakshmana Rao, J.  
4th September, 1940.

Arumachala Mudaliar and others, Accused.

CrL.R.C. No. 85 of 1940 and

CrL.R.P. No. 82 of 1940.

*Indian Police Act (V of 1861), Ss. 30, Cl. (2) and 32—Licence for taking procession—Violation of condition—Persons other than licensee, if guilty under S. 32.*

A licence under S. 30, Cl. (2) of the Indian Police Act for taking a procession contained a condition that music of all description should be stopped, within a distance of 50 yards on either side of any mosque. The condition was violated by the licensee and others who were not licensees.

*Held*, all the persons who violated the condition are guilty under S. 32 of the Indian Police Act, especially as they were aware of the conditions of the licence. The person violating the condition need not be the licensee.

K. S. Jayarama Iyer and G. Gopalaswami for Petitioners.

The Public Prosecutor (V. L. Ethiraj) for the Crown.

K. S.

Lakshmana Rao, J.  
4th September, 1940.

K. Sannayya, Accused.

CrL.R.C. No. 551 of 1940 and

CrL.R.P. No. 524 of 1940.

*Government of India Act, 1935, S. 270 (1)—Postman charged with offence under Ss. 409, 467 and 471—Indian Penal Code, for misappropriating amount of money order entrusted to him by forging thumb impression of payee—Postman—If person employed in connection with the affairs of the Government of India—Consent of Governor-General for prosecution—Necessity.*

A postman misappropriated the amount of a money order entrusted to him by forging the thumb impression of the payee. He was charged with offences under Indian Penal Code, Ss. 409, 467 and 471.

*Held*, the forged document was used in the execution of the duty of the postman, a person employed in connection with the affairs of the Government of India. The consent of the Governor-General is therefore necessary for the prosecution for the offence under S. 471, Indian Penal Code, but there is no bar to the trial of the offence under Ss. 409 and 467, Indian Penal Code.

K. S. Jayarama Aiyar and K. Gopalaswami for Petitioner.

The Public Prosecutor (V. L. Ethiraj) for the Crown.

K. S.

Wadsworth and Patanjali Sastri, JJ.  
10th September, 1940.

Lakshmana Iyer v.  
Ramaswami Naicken (minor).  
C.R.P. No. 1194 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 10 (2) (ii)—Mortgage to vendee for purchase price—Other property along with property purchased mortgaged—If contract to contrary excluding charge under Transfer of Property Act, S. 55 (iv) (b)—Debt not liable to be scaled down.*

Property was sold to the second defendant and the father of the other defendants, the vendee executing a mortgage for the full amount of the sale price and giving as security not only the property sold but also some other property. It was provided that the principal was payable after five years but should carry interest from date of the bond. In an application to scale down the debt,

*Held*, the terms of the mortgage do not constitute a contract to the contrary so as to exclude the statutory charge under S. 55 (iv) (b) of the Transfer of Property Act, and by reason of S. 10 (2) (ii) of Act IV of 1938, the debt is excluded from the scaling down provisions.

31 Cal. 57, followed.

35 M.L.J. 304, referred to.

A. C. Sampath Aiyangar for Petitioner.

N. Somasundaram for Respondent.

K. S.

The Chief Justice and Horwill, J.  
10th September, 1940.

The Official Assignee, Madras  
v. Hukumchand Khimsura.  
O.S.A. No. 13 of 1940.

*Pledge—Deposit of insurance policies accompanied by a letter setting out the policies as articles pledged—If creates a valid lien in favour of creditor.*

Mere fact of deposit of insurance policies by way of pledge created no lien in favour of the creditor. A letter which set out the policies as articles pledged was merely evidence of the deposit and did not amount to a valid assignment of the policies and conferred no rights on the creditor.

K. V. Ramachandra Aiyar and S. Tyagaraja Aiyar for Appellant.

A. V. Seshayya for Respondent.

K. S.

Wadsworth and Patanjali Sastri, JJ.  
10th September, 1940.

Kannan Nambiar v.  
Subramaniam Pattar.  
C.R.P. No. 257 of 1939.

*Madras Agriculturists Relief Act (IV of 1938)—Mortgage to stakeholder of chis fund for payment of Rs. 9,000 in 18 instalments of Rs. 500 each—Suit on mortgage—Compromise decree for payment of*

*smaller amount in five instalments—Liability of decree to be scaled down—Date on which liability to be regarded as incurred.*

A mortgage bond in favour of the stakeholder was executed on 16th July, 1923, for payment of Rs. 9,000 in 18 instalments of Rs. 500, each payable every eight months in respect of future subscriptions for one ticket in a chit fund. A suit on the mortgage was compromised, the plaintiff agreeing to accept payment of a smaller sum in five instalments in full satisfaction of the claim, and a decree in terms was passed on 14th April, 1936.

In an application for scaling down the compromise decree, *held* that the decree is liable to be scaled down with reference to the principal sums originally or subsequently advanced.

(1940) 2 M.L.J. 293 followed.

I.L.R. 1939 Mad. 218 and C.R.P. No. 602 of 1939, C.R.P. No. 1483 of 1939 referred to.

The liability must be considered to have been incurred on the date of the mortgage bond and the decree scaled down under S. 8 of the Act.

P. Govinda Menon for Petitioner.

K. Kuttikrishna Menon for Respondent.

K. S.

Wadsworth and Patanjali Sastri, JJ.  
11th September, 1940.

Abdur Khadar and others  
v. Subramania Pattar.  
C.R.P. No. 16 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 10 (2)—Usufructuary mortgage and lease back to mortgagor—Rent payable if can be treated as interest and scaled down.*

Where there is a usufructuary mortgage and a lease back to the mortgagor, though both form part of one and the same transaction, the rent stipulated could not be regarded as interest on the mortgage amount and scaled down under the Act.

P. Govinda Menon for Petitioners.

K. Kuttikrishna Menon for Respondent.

K. S.

Wadsworth and Patanjali Sastri, JJ.  
11th September, 1940.

Vasudevan Nambudri  
v. Raman Nambudri.  
C.R.P. No. 824 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 15—"Panayam purappad"—Possessory mortgage—Surplus of income from property repayable to mortgagor—If rent—Applicability of S. 15.*

A possessory mortgage styled *Kavasam panayam* under which the mortgagee was to appropriate, out of an estimated yield of 490 paras of paddy 200 paras in lieu of interest on the mortgage money, pay 60 paras for assessment on the property and pay the balance of 230 paras to the mortgagor as '*panayam purappad*' in two instalments during the harvest season. In case of default in payment of '*panayam purappad*,' provision was made for its application together with fixed interest in payment of the mortgage money calculating the value of paddy at current rate. A charge was provided on the standing crops for the arrears of *purappad* after default in payment. A purchaser of the mortgagee's rights in execution sale claimed the benefit of S. 15 of Act IV of 1938 depositing the *purappad* for 1937-1938. *Held*, the amount which had to be paid as *panayam purappad* is not 'rent' in the proper sense of the term and does not fall within the mischief of S. 15 of Madras Act IV of 1938.

2 Mad. 187 and 57 M.L.J. 800 relied on.

P. Govinda Menon for Petitioner.

K. V. Gopalakrishna Nair for D. H. Nambudripad for Respondent.

K. S.

Wadsworth, J.  
1st August, 1940.

Chavukola Kottiah v. Venkatakrishnaiah.  
O.R.P. No. 1166 of 1939.

*Madras Agriculturists Relief Act (IV of 1938)—Application for scaling down—Dismissal—Fresh application for same relief barred by res judicata.*

When a previous application for scaling down had been dismissed for default and a restoration petition had also been dismissed a fresh application for the same relief is barred by the principle of S. 11 of the C. P. Code.

T. Bajagopalan for Petitioner.

Y. G. Krishnamurthy for Respondent.

K.S.

Krishnaswami Aiyangar, J.  
6th August, 1940.

Pyda Suryanarayana Murthi v.  
Municipal Council, Cocanada.  
O.R.P. No. 1259 of 1937.

*Madras District Municipalities Act (V of 1920), S. 83—Promises rented out for use for educational purposes—If exempted from property tax.*

A portion of a house was rented by the Municipal Council and used for accommodating a school run by the Municipal Council. Exemption from liability to property tax in respect of the house was claimed under S. 83 of Madras Act V of 1920.

Held, where the owner leases out property and collects full rent, he is not entitled to exemption from liability to property tax. The word "used" in the section must be read in the sense "used by the person who is primarily liable for the tax" or in other words the "owner".

P. Somasundaram for Petitioner.

B. V. Subramanyam for Respondent.

K.S.

King, J.  
12th August, 1940.

Kanchala Ramamurthy v. Nanna Bangaramma.  
O.M.S.A. No. 207 of 1938.

*Practice—Attachment—Decree attached set aside on appeal—Effect—New decrees passed—If attachment revived.*

When a decree is attached and that decree is set aside on appeal the attachment must automatically come to an end. Such an attachment cannot revive when a new decree is passed, without any action by the attaching creditor.

A.I.R. 1938 Rang. 346, not followed.

50 M.L.J. 79, referred.

M. S. Ramachandra Rao for Appellant.

G. Lakshamma and G. Chandrasekhara Sastri for Respondent.

K.S.

King, J.  
15th August, 1940.

Govindarajulu Naidu v. Gopelasami Chetty.  
O.R.P. Nos. 722 & 723 of 1937.

*Transfer of Property Act (IV of 1882), S. 76—Usufructuary mortgagee from lessee—If can be proceeded against by the landlord for rent or jodi due on that property.*

Section 76 of the Transfer of Property Act, deals only with the relative rights and duties of the mortgagor and mortgagee and cannot confer on a landlord the right to proceed directly against the usufructuary mortgagee of his lessee for rent or jodi due to him.

C. S. Venkatachariar and D. Ramaswami Aiyangar for Petitioner.

Alladi Ramaswami Aiyar for Respondent.

K.S.

N R Ç

Wadsworth, J.  
15th August, 1940.

Chimakutti Semhayya v. Hirachand  
Chumnilal Firm.  
O.R.P. No. 592 of 1939.

*Provincial Insolvency Act (V of 1930), S. 72—Insolvent obtaining credit without disclosing bankruptcy—Order directing prosecution for offence—Appealability—Order on appeal—Revision—Earlier proceedings for prosecution stopped—If bar to subsequent proceedings for prosecution—Discharge of insolvent pending appeal against order directing prosecution—If makes the proceedings for prosecution void.*

Substantially the provisions of S. 72 (2) of the Provincial Insolvency Act are analogous to those of S. 476 of the Criminal Procedure Code, and the Insolvency Court should give notice to the insolvent before directing his prosecution and a decision directing the prosecution for the offence of obtaining credit without disclosing his bankruptcy is a decision against which the insolvent as the aggrieved party has a right of appeal similar to that provided by S. 476 of Criminal Procedure Code. The correctness of the dismissal of such an appeal by the District Judge can be canvassed in revision.

A.I.R. 1938 Nag. 9, referred.

Where the Court had declined to proceed with a prosecution under S. 72 owing to the absence of the person who laid the information and subsequent proceedings are taken when the Court had before it more materials no question of *res judicata* arises and if it is a mere question whether the order of the Court is wise or unwise it is not a matter that should be gone into in revision. Where a prosecution is launched and the appellate Court declines to stop it the discharge of the insolvent before the appeal was dismissed cannot make those proceedings void.

K. Kamarcara Rao for Petitioner.

K. Bhimasankaran for Respondents.

K.S.

King, J.  
30th August, 1940.

Subba Naicker v. Savarimuthu  
Pillai & others.

A. A. A. No. 44 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 23—Scope—Sale in execution—When can be set aside.*

In S. 23 the clause "notwithstanding the sale has been confirmed" in no way affects the main provisions of the section and obviously cannot be used to introduce any new proviso, e.g., "that a sale shall not have been followed by delivery of property". The legislature recognises that the new enactment is at variance with the Limitation Act and Civil Procedure Code. Interpretation of S. 23 is an important matter coming within S. 115 of C.P. Code though no first appeal lies against the District Munsif's order on the section.

A. Swaminatha Aiyar and S. Thiagaraja Aiyar for Appellant.

B. Ramamurthi Aiyar for Respondent.

K. S.

The Chief Justice and Horwath, J.  
4th September, 1940:

Official Assignee of Madras v.  
Natesa Achari.

O.S.A. No. 58 of 1939.

*Limitation Act (IX of 1908), S. 19—Usufructuary mortgage—Mortgagors co-owning 'If we commit default you shall bring property to sale, take principal and interest and pay earlier mortgagee if any debts incurred for benefit of the family have to be paid to him in respect of the property and pay the balance to us'—How far acknowledgment of earlier mortgage debt to save limitation.*

*S*, executed a mortgage of his property to *M*, on 9th August, 1921, to secure Rs. 5,000 and he executed on 6th January, 1928, a second mortgage of the property to *M*, to secure a further advance of Rs. 1,000. On 4th July, 1924, *S* executed a usufructuary mortgage of the property in favour of *B* for Rs. 1,000 in which the following passage appeared: 'If we commit default in respect of any condition you shall bring the said property to a public or private sale take the principal, and interest and also the auction expense as per account, pay *M* if any debts incurred for the benefit of our family has to be paid to him in respect of the said property and pay the balance if any to us?.'

Held, there is no acknowledgment of the earlier mortgage debt within the meaning of S. 19 of the Limitation Act. For S. 19 to apply the words used must be words which clearly indicate an acknowledgment of liability of the particular debt.

*T. V. Srinivasan* for Appellant.

*K. S. Rajagopala Aiyangar*, *K. Govindan* and *V. S. Rangachari* for Respondent.

K.S.

*King, J.*  
6th September, 1940.

Udumbanthala Nalu Purapatti Mammad v.  
Vyagaram Narayana Pattar and others.  
C. M. S. A. No. 51 of 1940.

*Madras Agriculturists Relief Act (IV of 1938), S. 8 (ii), Proviso D—Person paying as jenmi less than Rs. 500 land revenue, paying other land revenue as ryotwari pattadar which together exceeded Rs. 500—Effect.*

There are no words in the Proviso D to S. 8 (ii) restricting the land revenue payable by a *jenmi* to the revenue payable only on the land so held by him and taking the clause in its plain meaning where the total payments by a *jenmi* to the government (including amounts paid as ryotwari pattadar) on account of land revenue exceeds Rs. 500. Proviso D to S. 8 (ii) is applicable and excludes him from being an agriculturist under the Act.

*K. Kuttubhishna Menon* for Appellant.

*O. T. G. Nambian* for Respondents.

K.S.

*Wadsworth and Patanjali Sastri, JJ.* Venkatammal v. Ramaswami Aiyar.  
11th September, 1940.

O. R. P. No. 61 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 8—Explanation, 10 (2) (ii), and 19—Purchaser of hypotheca—Sud on the mortgage—Compromise decree—Liability of purchaser—If personal—Liability if excluded from scaling down provisions under S. 10 (2) (ii)—Liability on renewal of original mortgage—If auction costs also included in costs provided for in Ss. 11 and 19.*

A mortgage was executed by *S* on 16-8-1917 in favour of the plaintiffs. On 13-12-1923 the wife and daughter of *S* (defendants 1 and 2) executed a fresh mortgage in renewal of the earlier one, by *S*. On 27-12-1938 defendants 1 and 2 sold the hypotheca to the 4th defendant who undertook to discharge the mortgage by payment of Rs. 2,500 out of the purchase price. Then a suit on the mortgage resulted in a compromise decree by which defendants 2 and 4 were to satisfy the decree by paying Rs. 1,500 by 24th August, 1935 and Rs. 2,050 by 16th July, 1936 but in default of such payments the decree was to be a final decree for the full plaint claim (Rs. 4,848-8-0) with interest and costs. Towards the decree Rs. 500 was paid on 1-3-1936, Rs. 1,000 on 18-7-1936 and Rs. 1,000 on 5-1-1937.

The 4th defendant filed an application under S. 19 of Act IV of 1938 for scaling down.

*Hold:* (1) The Liability sought to be scaled down is not the Liability of the 4th defendant to her vendors but the Liability to the mortgagee and consequently S. 10 (2) (4) of Act IV of 1938 has no applicability. (2) The Liability under the compromise decree was a renewal of the previous mortgage Liability. (3) When both the original mortgagor and his purchaser are agriculturists, the purchaser can claim to have the debt scaled down on the basis that the mortgage debt for which the purchaser of the hypotheca became liable is itself a renewal of an earlier debt in favour of the same creditor. (4) The provisions of S. 11 like those of S. 19 relate only to costs originally decreed and do not cover costs of execution.

V. C. Veeraraghavachariar for Petitioner.

K. V. Ramachandra Aiyar for Respondent.

K. S.

Wadsworth and Patanjali Sastri, JJ. Ithiri Nambudri v. Sankunni Nair.  
18th September, 1940.

C. B. P. No. 2189 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 15—Assignee of a portion of kanom allotted to tavashi on partition—If entitled to benefit under S. 15—Deposit of rent to include arrears of revenue payable by kanomdar for those fasls.*

An assignee of the whole of the tenant's interest in a portion of his holding is a person who is liable to pay rent in respect of that portion and provided he is an agriculturist he is entitled to deposit the arrears of the holding for fasls 1846 and 1847 and obtain the benefits of S. 15 of Act IV of 1938. A deposit of rent by a tenant under S. 15 must include any arrears of Government revenue payable by the kanomdar in respect of those fasls.

K. P. Ramakrishna Iyer and D. H. Nambudripad for Petitioners.

P. Govinda Menon for Respondents.

K. S.

Wadsworth and Patanjali Sastri, JJ.  
18th September, 1940.

Ramadas Reddi v.  
Munisami Reddiar.

C. B. P. No. 1454 of 1939.

*Madras Agriculturists Relief Act (IV of 1938)—Ss. 8, 15 and 19—Applicability to decree on promissory note executed for arrears of rent.*

Where a decree is passed on a promissory note executed for arrears of rent, the decree is a decree for a debt and not for rent. The decree will not fall under S. 15 but under Ss. 9 and 19 of Act IV of 1938.

I.L.R. 55 Mad. 880, applied.

V. V. Ramachari for Petitioner.

T. B. Srinivasan for Respondent.

K. S.

Wadsworth and Patanjali Sastri, JJ.  
18th September, 1940.

Pandiri Sarveswara Rao v.  
Mathuri Umamaheswara Rao.  
C. B. P. No. 1020 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 8 (ii), Proviso B and C—Assessment to profession-tax—Criterion for applying Proviso B—Date of assessment or period of assessment—Some properties assessed in name of husband and others in name of wife—Applicability of Proviso C to S. 8 (ii).*

The assessment to profession-tax of a debtor was actually made on 15-1-1938 but it was retrospective and covered the half year beginning 1-4-1937:

*Hold,* S. 187-B of the City Municipal Act contemplates the assessment being retrospective but does not provide that the date of assessment shall

be deemed to fall within the period to which the assessment relates. It is impossible to read the words of Proviso B to S. 3 (4) of Act 1938 as if the criterion for exclusion was the actual period for which the tax was payable and not the time within which the assessment was made. The absence of a provision for entry of date of assessment in form B cannot control the meaning of the Act.

A husband and wife were co-mortgagors and the husband was assessed on properties having an annual rental of Rs. 300 and the wife on properties with rental value of Rs. 432. The mortgagee claimed that the husband was the real owner and excluded from benefits of Act IV of 1938 by reason of Proviso C to S. 3 (4) of the Act.

*Held*, Proviso C to S. 3 (4) of the Act clearly requires that in order to come within its scope an individual must have been actually assessed, and it is not sufficient that he is interested in property in respect of which somebody else has been assessed.

(1939) 2 M.L.J. 495 followed.

P. V. Rajamannar and K. Subba Rao for Petitioner.

K. Bhimasankaran for Respondent.

K. S.

Wadsworth and Patanjali Sastri, JJ.  
16th September, 1940.

K. V. Ramaswami Aiyar v.  
Ramayya Sastrigal.

O. B. P. No. 1213 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 19—Payment before 1—10—1937 towards a decree for principal, interest and costs and entering of part satisfaction—Re-appropriation—If permissible.*

On a promissory note dated 21—6—1933 for Rs. 3,000 a decree was passed for Rs. 3,400 principal and interest with Rs. 387 for costs. On 28—2—1937 the respondent purchased the judgment-debtor's property in execution for Rs. 3,406 for which amount part satisfaction was entered on 17—7—1937. On 30—8—1937 a fresh E. P. was filed claiming Rs. 678—18—0 as the balance due under the decree. In an application for scaling down;

*Held*, the payment of Rs. 3,406 cannot be regarded as a payment to the debt generally, kept in suspense and not appropriated. The payment being more than sufficient to cover all the interest on the debt, the debtor will not be benefited by any re-appropriation from principal to costs under the proviso to S. 19.

T. V. Ramiah for Petitioner

T. L. Venkatarama Iyer for Respondent.

K. S.

Wadsworth and Patanjali Sastri, JJ.  
16th September, 1940.

Vasudevan Nambudri v.  
Kayyanna.

O. B. P. No. 854 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 15—Assignee of a portion of the properties demised under a kanom—If liable to pay the rent due to jennmi and entitled to benefits under S. 15 of Madras Act IV of 1938.*

An assignee of a part of the property demised under a kanom is liable by privity of estate to pay a proportionate part of the rent reserved under the lease, so long as he remains assignee, 38 Mad. 86 followed and by virtue of S. 41 of Malabar Tenancy Act the jennmi is entitled to recover the entire rent under the lease from each assignee. The assignee of part of the demised property is therefore entitled to claim the benefit of S. 15 of Act IV of 1938.

P. Govinda Menon for Petitioner.

D. A. Krishna Variar for Respondent.

K. S.

*Wadsworth and Patanjali Sastri, JJ.* Rajoo alias Doraiswami  
16th September, 1940. Goundar v. Palaniappa Chettiar.  
O. B. P. No. 66 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 3 (ii), Proviso A*  
*—Assesses to income-tax in year ending 31-3-1937 in respect of income*  
*for year ending 31-3-1936—Applicability of Proviso A to S. 3 (ii).*

It was contended that Proviso A to S. 3 (ii) of the Act did not apply to a case in which the assessment was made in the year 1936-37 but in respect of the income of the previous year.

*Held*, Proviso A only disqualifies persons who have been assessed to income-tax in either of the two financial years preceding 31-3-1938 and it does not lay down any restrictions regarding the period in respect of which that assessment might have been made.

*C. A. Seshagiri Sastri* for Petitioner.

*T. P. Gopalakrishna Aiyar* for Respondent

K. S.

*Wadsworth and Patanjali Sastri, JJ.* C. S. Ramier v. B. N. Srinivasiah.  
18th September, 1940. O. B. P. No. 1574 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 19—Extent of*  
*puisne mortgagee's right to scale down when owner of equity of redemption*  
*a non-agriculturist.*

A puisne mortgagee impleaded in a suit on first mortgage is a judgment-debtor and the mortgage debt is payable by him. The mere fact of the sub-mortgage by an agriculturist to a non-agriculturist does not take the debt outside the purview of the Act. The agriculturist judgment-debtor is entitled to the full benefit of the Act. Form of decree, where one debtor agriculturist and another non-agriculturist indicated.

*M. S. Venkatarama Aiyar* for Petitioner.

*O. S. Venkatachariar and D. Ramaswami Ayyangar* for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.* Punyam Rangaswami Reddi v.  
18th September, 1940. Gali Gopalakrishna Reddi.  
O.B.P. No. 790 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 3 (iv), Proviso D and*  
*S. 15—Owner of kudivaram right purchasing samin rights and becoming*  
*"landlord"—Usufructuary mortgages of samin in two moieties—One of the*  
*mortgagees getting himself recognised as the "landholder" by the Collector*  
*—Owner retaining ryoti lands as tenant of his mortgagees—If a "land-*  
*holder" of the estate paying more than Rs. 500 as peishkash.*

The petitioner owned the kudivaram in certain lands in an estate under the Madras Estates Land Act, which was paying Rs. 1,200 as peishkash. He purchased the samin rights and was recognised as landholder by the Collector. In 1934 he executed two usufructuary mortgages each covering one moiety of the samin right in the estate. He retained his ryoti lands and became the tenant of his mortgagees in respect of those lands. In 1935 the respondent one of the mortgagees obtained from the Collector recognition as the "landholder". In an application for scaling down,

*Held*, notwithstanding the recognition of the respondent as the landholder the petitioner as owner of the estate must also be deemed to be a landholder within the definition in S. 3 (5) of the Madras Estates Land Act. He is therefore not an agriculturist under Act IV of 1938 and disentitled to the benefits conferred by S. 15 of the Act.

*T. L. Venkatarama Aiyar* for Petitioner.

*S. A. Seshadri Aiyangar* for Respondent.

K.S.

Burn, J.                      *Gopala Menon v. Meenakshi Ammal and others.*  
3rd September, 1940.                      O.R.P. No. 461 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 23—Decree wiped out by sale in execution and satisfaction entered—Person who was judgment-debtor if entitled to apply under S. 23.*

Where properties of the judgment-debtor have been sold away, the sale confirmed and satisfaction of the decree entered up there is no longer a 'judgment-debtor' because the decree itself has been wiped out before the commencement of Act IV of 1938 and after that no application under S. 23 is competent by a person who was a judgment-debtor.

K. Kuttikrishna Menon for Petitioner.

K. P. Krishna Menon, A. P. Kuttiamkara Menon and C. K. Viswanatha Aiyar for Respondents.

K.S.

Horwill, J.                      *Vanjeeswara Aiyar v. District Board,*  
6th September, 1940.                      South Arcot and others.  
O.R.P. No. 1492 of 1937.

*Contract—Term that party is not entitled to be paid for work done if it was not check-measured or did not give satisfaction—Effect—Quantum meruit if applicable where party is not entitled to payment by reason of the term in the contract.*

Where by the terms of the contract the person who does the work agrees that he is not entitled to any remuneration unless the work has been check-measured, then, clearly he cannot claim for any work that has not been check-measured. There is no room for an implied contract, where there is an express contract in existence and in such a case the principle of *quantum meruit* cannot be applied. But a local body could have and should have paid for any work from which it derived some benefit and the board acted dishonestly in making no payment at all.

P. Sridhara Rao for Petitioner.

S. Ponchapakasa Sastri and K. B. Krishnaswami for Respondents.

K.S.

Burn, J.                      *Namberumal Setti v. Ramannjam Setti.*  
11th September, 1940.                      O.R.P. No. 256 of 1938.

*Civil Procedure Code (V of 1908), O. 21, r. 90—Persons declared to be entitled to rateable distribution—Right to apply under O. 21, r. 90 to have the sale set aside for material irregularity or fraud.*

A person who has been declared entitled to rateable distribution out of the proceeds of the sale is interested in the question whether the sale was to be set aside or confirmed. O. 21, r. 90 prescribes that such a person may apply to have the sale set aside on the ground of material irregularity or fraud. Considerations applicable to setting aside of sales under O. 21, r. 89 are not applicable in their entirety to the setting aside of sales under O. 21, r. 90.

B. Jagannatha Das for Petitioner.

K. Kuppaswami and B. V. Subramaniam for Respondent.

K.S.

The Chief Justice and Horwill, J.                      *Nadimuthu Pillai v. Official*  
11th September, 1940.                      Liquidator of Indo-Carnatic Bank.  
O. S. A. No. 15 of 1940.

*Companies—Liquidation—Shareholder's unstamped application for transfer three months before liquidation—Transfer not registered—If such a shareholder a contributory.*

The appellant's application for transfer of his shares was sent in some three months before liquidation but the application was not stamped and the transfer was never registered.

*Held, the appellant was a shareholder when liquidation commenced and he is a contributory.*

*M. S. Venkatarama Aiyar* and *T. V. Ramanatha Aiyar* for Appellant.

*S. Srinivasaraghavan* (Official Liquidator).  
K.S.

*Wadsworth and Patanjali Sastri, JJ.*

17th September, 1940.

*Polliseti Venkataratnam v.*

*Dhulipudi Suryanarayana Rao.*

C.R.P. Nos. 933 to 935 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 23—Sale under Madras Estates Land Act on 10th December, 1937—Sale proceeds lying in Court and no sale certificate issued—Application on 9th April, 1938, under Act IV of 1938, S. 23—Maintainability.*

S. 23 is applicable to sales in execution of any decree whereby immovable property in which an agriculturist is entitled to the benefits of the Act has been sold and if the application is made within 90 days of the commencement of the Act the Court is obliged if satisfied that the applicant is entitled to the benefits of the Act, to set aside the sale after giving notice to the persons interested and hearing them. The absence in the section of a *non obstante* provision regarding what is contained in the Madras Estates Land Act, the absence of any necessity for confirmation of sale under S. 181 of the Estates Land Act, and the absence of provisions in S. 23 regarding setting aside sales under the summary provisions contained in Ss. 112 to 118 of the Estates Land Act are not an indication that S. 23 would have no application to sales for arrears of rent. "Any decree" in S. 23 will include decrees under the Estates Land Act.

The mere holding of a sale will not wipe off the arrears of rent. The arrears will remain outstanding until the proceeds of sale are paid to the landholder. Apart from the question whether the tenants were entitled to benefits under S. 15 they are clearly entitled to benefits under the Act in respect of the decree as regards interest on costs and under Ss. 8 and 9 "Rent" includes rent covered by a decree.

The Court had therefore no option but to set aside the sales.

*D. Narasimha* for Petitioner.

*V. Suryanarayana* and *K. Bangachari* for *A. Satyanarayana* for Respondents.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*

18th September, 1940.

*Booyathumma and others v. Ibrayi.*

C.M.S.A. No. 83 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 23—Assignment by janni of decree for arrears of rent—Purchase of holding by assignee decree-holder in sale in execution—Confirmation of sale and delivery of property—Debtor's right to apply under S. 23.*

A *janni* obtained a decree for arrears of rent and assigned the decree to a stranger who himself purchased the holding of the tenant in the sale in execution on 6th January, 1938, and obtained possession after due confirmation of the sale. The tenant's legal representatives applied under S. 23 to have the sale set aside.

*Held*, though the tenant may not be entitled to any benefit under S. 15, as against the assignee decree-holder, the decree being for rent with interest and costs the tenant might be entitled to relief under Ss. 8 and 9 of the Act, and so the application under S. 23 is maintainable, as the tenant is an agriculturist entitled to the benefits of the Act, and the sale must be set aside.

*K. P. Kamalishna Aiyar* for Appellants.

*P. Govinda Menon* for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*

18th September, 1940.

*A. K. C. T. Subramanian Chettiar*

*v. M. Subbia Mudaliar & others.*

C. M. A. Nos. 588 and 604 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 3, Proviso O to sub-section (ii)—Agreement by judgment-debtor to sell the immovables*

*situate within the Union—Possession transferred to intending purchasers—Debtor if excluded from operation of S. 8 (11), proviso C.*

The judgment-debtor agreed to sell his lands situate within Union limits and put the intending purchasers in possession on or about June, 1935. The assessment continued to be in his name. He pleaded that he had ceased to be the owner of lands within the Union by virtue of S. 58 (A) of the T.P. Act and that proviso C to S. 8 (11) did not apply to him.

*Held*, the judgment-debtor continued to be a non-agriculturist in spite of the transfer of possession under the agreement to sell.

D. A. S. Swami for T. Nallasivan Pillai for Appellant.

A. Swaminatha Aiyar, S. Tyagaraja Aiyar and K. B. Rangaswami  
• Aiyangar for Respondents.

K. S.

Wadsworth and Patanjali Sastri, JJ. Palani Goundan v. Peria Goundan.  
18th September, 1940. C.B.P. No. 1734 of 1938.

*Madras Agriculturists' Relief Act (IV of 1938), S. 19—Decree on mortgage—Purchaser of equity of redemption—If judgment-debtor—Liability of, if 'debt' under Act liable to be scaled down.*

The purchaser of the equity of redemption in a sale in execution of a money decree against the mortgagors claimed to have the mortgage decree amended under S. 19 of Act IV of 1938.

*Held*, in the absence of any definition in the Act, there is no obvious reason why the term "judgment-debtor" should not be understood as including a person whose liability is a "debt", as defined by the Act, more especially as that definition includes a judgment debt. 80 Mad. 587, applied. Decision of Horvill, J., (1940) 2 M.L.J. 317, overruled.

The liability of the purchaser of the equity of redemption, is a "debt" within the meaning of the Act. I.L.R. (1939) Mad. 218, relied on.

It is immaterial whether or not the debtor had the agriculturist character when the debt was originally incurred where it was incurred prior to 1st October, 1937.

V. N. Venkataradaachariar for Petitioner.

E. Desikan for Respondent.

K.S.

The Chief Justice and Horvill, J. The Municipal Council, Palani v.  
19th September, 1940. Sri Dhandayuthapani Devasthanam.  
S. A. No. 931 of 1937.

*Madras District Municipalities Act (V of 1920), Ss. 81 and 83  
(i) (a)—Construction—Power-house of Devasthanam—When exempt from property-tax—Power-house used for supplying electricity to shops and hotels and yielding profits—Effect.*

A power-house was erected by the Palani Devasthanam on the Hill. The power-house supplied energy not only to light up the Hill and its approaches but also to certain shops and a hotel in the Hill for consideration yielding a profit. It was contended that the Hill having been set apart for public worship and the Hill continuing to be used for public worship the power-house on the Hill was not taxable as it was exempted under S. 83 (i) (a).

*Held*, if electricity had been used only for lighting the temple and its approaches the Devasthanam will be entitled to exemption. As the power-house was, however, used for supplying electricity to shops and a hotel yielding a profit it was subject to assessment to property-tax. The property set apart for public purpose may or may not be used for the purpose. But to claim exemption from taxation it should not be used for any other purpose.

*K. S. Sankara Aiyar* for *T. E. Venkatarama Sastri* for Appellant.  
*T. M. Krishnaswami Aiyar* for Respondent.

K. S.

*The Chief Justice and Horvill, J.*                      *Mayandi Chettiar v. Madura Municipality through the Commissioner.*  
 19th September, 1940.                      S. A. No. 582 of 1937.

*Madras District Municipalities Act (V of 1920), S. 216—Building commenced and completed before application for permission granted by Municipality—Notice under S. 388, compelling demolition of building and compliance with notice—Legality of action under S. 388—Proper procedure was that under S. 216 and not under S. 388.*

The plaintiff applied to the respondent municipality for permission to put up a building but before permission was granted he commenced and completed the building. The Special Officer of the Municipality issued a notice directing the plaintiff to demolish the building within four days under S. 388 of the Act as no licence had been obtained. In pursuance of the order the building was demolished. In an action by the plaintiff for damages,

*Held*, that a special provision should prevail against a general provision and the special officer ought to have issued notice under S. 216 (which specially relates to construction of buildings) to show cause why the building should not be demolished and the action taken under S. 388 (which was a general provision relating to all cases) was illegal and high-handed and the plaintiff was entitled to damages.

*T. L. Venkatarama Aiyar* for Appellant.

*O. S. Rama Rao Sahab* for Respondent.

K. S.

*Wadsworth and Patanjali Sastri, JJ.*                      *Ramaswamy Udaiyar v. Servu Rama Am. Ramanatham Chettiar.*  
 19th September, 1940.                      C. M. A. No. 643, etc. of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 19—Application for scaling down a decree against which appeal was pending—Dismissal of application for scaling down—Appeal against order not clubbed with main appeal against the decree which was allowed to proceed ex parte by the applicant—Appeal against order infructuous as appellate decree had been substituted for decree sought to be scaled down.*

Section 19 of Madras Act IV of 1938 has no application to decrees passed after the Act came into force, one reason being that any person who has a contention to urge which will affect such a decree must urge it in the pending proceedings, and if he does not so urge he must be taken to have waived it. There is no reason to apply a different principle to proceedings in appeal of which the affected party has notice. Accordingly where an application to scale down a decree (against which an appeal is pending) is dismissed, and an appeal against such order of dismissal is not clubbed with the main appeal which is allowed to be decreed *ex parte* by the debtor, then after the disposal of the main appeal substituting the appellate decree for the decree sought to be scaled down, the original decree cannot be scaled down and an appeal against dismissal of the application for scaling down under S. 19 becomes infructuous and must be dismissed.

*G. N. Chokry* for Appellant.

*K. S. Ramabhadra Aiyar* and *P. Sridhara Rao* for Respondent.

K. S.

King, J. Venkatasubbayya v. Ramabhothn and others.  
8th September, 1940. O.R.P. No. 101 of 1938.

*Provincial Insolvency Act (V of 1920), Ss. 58 and 54—Alienation by insolvent outside scope of S. 54—If can be attached under S. 58.*

Where an alienation is outside the scope of S. 54, it cannot be attached under S. 58. The alienee is under no obligation to pay an insolvent's creditors rateably as if he were an Official Receiver. If he has paid consideration in full and S. 54 is not applicable his purchase must be deemed to be in good faith.

K. Umamaheswaram for Petitioner.

K. Kuppusami for Respondents.

K. S.

King, J. Gajapathiraju v. Kondayya and others.  
11th September, 1940. O.R.P. Nos. 272 and 282 of 1938.

*Madras Estates Land Act (I of 1908), S. 8 (16)—Free gift of land in recognition of past services—If "service tenure".*

There can be no "service tenure" within the meaning of S. 8 (16) of the Madras Estates Land Act when a free gift is made of land in recognition of past services.

K. Umamaheswaram for Petitioner.

K. V. Gopalanwami and S. Suryaprakasam for Respondents.

K. S.

King, J. A.V.P. Palaniappa Chettiar v.  
18th September, 1940. Deivanai Achi and others.  
A.A.A.O. No. 98 of 1939.

*Limitation Act (IX of 1908), Art. 182—Territorial jurisdiction of Court in which decree was passed transferred to another Court—Application for execution to Court to which decree was transferred—If application to 'proper Court'.*

A decree was passed by the Subordinate Judge of Sivaganga in 1921. In May, 1925, a notification was issued by the Local Government transferring the territorial jurisdiction over the Taluk within which the cause of action in the suit arose from Sivaganga to Devakottai. In June, 1925, the District Judge of Ramnad passed an order transferring all the pending execution petitions and applications relating to that Taluk to Devakottai and also requested the Subordinate Judge of Sivaganga to send to Devakottai the records of the execution proceedings which had been disposed of in suits whose decrees were still alive. An application for execution was made to the Devakottai Court in 1926.

Held, the application of 1926 was not made to the 'proper Court' to save limitation.

M. Murugappa Chettiar for Appellant.

A. Swaminatha Aiyar and S. Thiagaraja Aiyar for Respondents.

K. S.

Burns, J. Chinna Narayana Heddy v. Narayana Reddy.  
19th September, 1940. O. R. P. No. 438 of 1938.

*Limitation Act (IX of 1908), S. 14—Plaintiff's petition to adjudge the debtor insolvent—Time spent in—When can be excluded from period*

*of Limitation—Negotiable Instruments Act, S. 94—Notice of dishonour—Essentials for validity.*

A promote dated 7-4-1988 executed by 1st defendant in favour of the 2nd defendant was assigned to the plaintiff on 2-12-1985. The plaintiff and another were prosecuting between 25-1-1986 to 25-8-1987 an insolvency petition to adjudicate the first defendant insolvent. The insolvency petition was dismissed on the ground that the debts amounted to less than Rs. 500. In a suit filed on 21-6-1987 on the promissory note,

*Held*, (1) It was not a case where the Insolvency Court was unable to entertain the petition for defect of jurisdiction and therefore S. 14 of the Limitation Act was inapplicable and the period during which the insolvency proceedings were prosecuted could not be excluded from the period of limitation.

(2) The notice of dishonour given to the 2nd defendant was not a valid notice as it failed to intimate that the plaintiff would hold the second defendant liable for the debt and the suit must be dismissed against both the defendants.

*Kasturi Seshagiri Rao, Ramonujam and Venkateshiah for Petitioner.*

*A. Bhujanga Rao for Respondent.*

K. S.

*Lakshmana Rao, J.*  
20th September, 1940.

*Sanku Venkatachalam and others, In re.*  
Ori. B. C. Nos. 183 to 185 of 1940.

*Madras Salt Act (IV of 1889), S. 74 (d)—Owner, driver and cleaner of motor lorry in which contraband salt was transported—Conviction under S. 74 (d)—When proper.*

Where the owner, driver and cleaner of a motor lorry in which contraband salt was transported are not shown to have known, or had reason to believe that the salt was contraband, they cannot be convicted under S. 74 (d) of the Madras Salt Act IV of 1889.

*A. Bhujanga Rao for Petitioners.*

*C. D. Venkatraman for The Crown Prosecutor for the Crown.*

K. S.

*Lakshmana Rao, J.*  
20th September, 1940.

*Ramachandran, In re.*  
Ori. B. C. No. 211 of 1940.

*Madras Motor Vehicles Rules (1938), r. 4, cl. (iii)—“Contract carriage”—Use without permit—Offence.*

The car of the petitioner was used for carrying passengers for reward under a contract for the use of the vehicle for an agreed sum, and possession of the car was not transferred within the meaning of the explanation to r. 4, cl. (iii) of the Madras Motor Vehicles Rules, 1938. The car would therefore be a “contract carriage” as defined in r. 3, cl. (ii) and the petitioner had no permit to use it, as a contract carriage,

*Held*, the petitioner was guilty.

*M. Rangamatha Sastri and M. V. Ganapathi for Petitioner.*

*The Crown Prosecutor on behalf of the Crown.*

K. S.

[F.B.]

*The Chief Justice, King and Patanjali Sastri, JJ.* In the matter of a First Grade Pleader—  
Referred Case No. 18 of 1940.  
28th September, 1940.

*Legal Practitioners Act (XVII of 1879), Rules framed under—R. 16—Failure to maintain accounts required by—Professional misconduct.*

Failure to keep accounts of all moneys received and disbursed by a pleader in connection with each suit in which he is engaged as a pleader, is professional misconduct. Even if a vakil has not much work he is bound to keep accounts for whatever work he may have.

- *K. Umamaheswaram for The Advocate-General.*

Respondent not represented.

K. S.

*Lakshmana Rao, J.* Commissioner, Dindigul Municipality v.  
26th September, 1940. Rajamani Aiyar.  
O.R.B.C. No. 192 of 1940.

*Madras District Municipalities Act (V of 1920), Ss. 249 and 313—Prosecution under—Refusal of executive authority to renew a licence—If ground for acquitting an accused prosecuted for not having a licence.*

Where the executive authority declined to renew a licence and a person is prosecuted under Ss. 249 and 313 of the District Municipalities Act for carrying on business without a licence, he cannot be acquitted on the ground that the order of refusal is not valid.

*V. Seshadri for K. Raja Aiyar and K. S. Rajagopalachari for Petitioner.*

*V. T. Rangaswami Aiyangar, A. S. Srinivasa Aiyar and S. Seshadri for Respondent.*

*The Public Prosecutor for the Crown.*

K. S.

*Wadsworth, J.* Kumaraswami Reddier v. Rangaswami Naicker  
30th September, 1940. and others.  
O.R.P. Nos. 1588 and 1589 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), Ss. 19 and 23—Sale in execution of mortgage decree—Application by judgment-debtor—Qualification for benefits under—Necessity to give notice to puisne mortgagee.*

Even in respect of sale of mortgaged properties after 1st October, 1937, it is not enough that the judgment-debtor is the owner of the mortgaged properties to entitle him to the benefit of Ss. 19 and 23 of the Act. It must be shown that at the date of his application the judgment-debtor was possessed of other lands to entitle him to be deemed an "agriculturist" within the meaning of the Act.

Under the proviso to S. 23 notice to the puisne mortgagee is necessary and if he is not impleaded and notice has gone only to the decree-holder auction-purchaser, the terms of the proviso are not complied with.

*K. S. Ramabhadra Iyer and N. G. Krishnamachariar for Petitioner:*

*Parasurama Aiyar for T. V. Ramiah for Respondents.*

K.S.

[F.B.]

*The Chief Justice, King and  
Patanjali Sastri, JJ.  
30th September, 1940.*

*M. Lakshmana Iyer and another v.  
Ayyachami Chettiar and another.  
S.A. Nos. 353 to 355 of 1937.*

*Madras Estates Land Act (I of 1908), Ss. 118 and 146—Assignee of registered pattadar recognised as ryot by landlord—Default in payment of rent—Assignee if can be proceeded against as "defaulter".*

A transferee of the holding was recognised as ryot by the landlord. The pattas continued in the name of the transferor. After the death of the transferor the transferee was proceeded against as a "defaulter" and his holding was purchased by the landlord.

*Held*, the term "defaulter" in S. 118 of the Act would include cases of transferee of the whole or part of a holding, whom the landlord was not obliged to recognise under S. 146, but whom he had recognised as a ryot and the sale of the holding was valid.

44 Mad. 584, referred. 27 Mad. 332, relied on.

*T. M. Krishnaswami Aiyar and N. Sivaramakrishna Aiyar* for Appellants.

*T. P. Gopalakrishna Aiyar and L. K. Sarma* for Respondents.

K.S.

[F.B.]

*The Chief Justice, King and  
Patanjali Sastri, JJ.  
30th September, 1940.*

*Seetharamanjaneyulu (minor by guardian)  
v. Vishnubhotla Ramayya.  
O.M.S.A. No. 181 of 1938.*

*Civil Procedure Code (V of 1908), O. 21, r. 90—Proviso enacted by Madras High Court—Whether ultra vires.*

The proviso to O. 21, r. 90, Civil Procedure Code, enacted by the Madras High Court is not *ultra vires* the rule-making powers of the High Court.

1987 Rang.L.B. 268 (F.B.), distinguished.

*B. V. Ramaswamy* for Appellant.

*A. Lakshmayya* for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*  
19th September, 1940.

*Tammi Reddi v. The Imperial Bank of India at Cocanada.*  
O.B.P.No. 1379 of 1938 and  
A.A.O. No. 19 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 4 (c)—Applicability—Debt due to Imperial Bank cannot be scaled down.*

S. 4 (c) of Madras Act IV of 1938 is a complete bar to any attempt to scale down a decree passed in favour of the Imperial Bank.

*P. Somasundaram and P. Suryanarayana* for Petitioner.

*O. T. G. Nambiar* instructed by *King and Partridge* and *D. Naraswamy* for Respondent.

K. S.

*Pandrang Bow, J.*  
24th September, 1940.

*S. Sankaranarayana Aiyar* Appellant.  
S.A.Nos. 435 to 478 of 1940.

*Madras Estates Land Act (I of 1908), S. 26 (8)—Ryots paying from time immemorial only 80 panams as rent—Landlord whether entitled to benefit of S. 26 (8).*

The evidence showed that from time immemorial the rate of rent lawfully payable by the ryot was 80 panams so long as he continued to be a resident of the village. The condition of residence cannot be said to be an illegal condition which vitiates the contract of the original grant. S. 26 (8) of the Madras Estates Land Act relates only to cases where there has been a grant of land at a rent lower than the lawful rate payable by the ryot before the date of the grant. As there was no grant at a lower rate at any time the landholder is not entitled to the benefit of S. 26 (8) of the Act.

*B. Ramaswami Aiyar* for Appellant.

K.S.

*Burn, J.*  
26th September, 1940.

*Imperial Bank of Cocanada v. Municipal Council, Cocanada.*  
O.B.P. No. 465 of 1938.

*Madras District Municipalities Act (V of 1920), Sch. IV, r. 18—Applicability.*

R. 18, Sch. IV of the Madras District Municipalities Act applies in terms to all persons and companies transacting any business other than money-lending, whether they are or are not at the same time transacting money-lending business.

*O. T. G. Nambiar* instructed by *King and Partridge* for Petitioner.

*K. Bhimaswaram* for Respondent.

K. S.

*Wadsworth, J.*  
2nd October, 1940.

*Satyanarayana v. Peddi Naidu.*  
O.B.P.No. 1010 of 1940.

*Madras Agriculturists Relief Act (IV of 1938), S. 19—Application under to appellate Court—If original matter—Civil Procedure Code (V of 1908), O. 7, r. 10—Applicability.*

An application under S. 19 of Act IV of 1938 for scaling down a decree passed by an appellate Court was dismissed on the ground that the application ought to have been presented to the Court of first instance. In revision,

N.B.C.

*Held*, that the nature of an application under S. 19 of the Madras Agriculturists Relief Act was akin to an original petition and therefore O. 7, r. 10 which applies to a plaint in a suit, applies equally to such an application by force of S. 141, O.P.O. and the application ought to have been returned for presentation to the proper Court.

17 All 106 (P.O.) and 59 M.L.J. 75, referred to.

*B. V. Ramonartu* for *V. Govindarajachari* for Petitioner.

*Kasturi Seshagiri Rao* and *Kasturi Sivaprasada Rao* for 1st and 2nd Respondents.

K. S.

*King, J.*  
7th October, 1940.

*M. Narayanaswami Chetti* and others v.  
*B. Narayanaswami Chetti* and others.  
O.M.A. No. 371 of 1939.

*Trustee, suing—Removal from office pending suit—Right to continue the suit—Worshippers joining co-trustee and filing appeal—Maintainability—Trustee dead—Appropriateness of the order for retrial of suit.*

One of three trustees filed a suit for recovering monies on behalf of the trust (impleading the other trustees as defendants) against certain 3rd parties. Pending the suit the plaintiff was removed from his office and as the successor did not come on record the trial Court dismissed the suit. Against the decision an appeal was filed by the plaintiff and three other worshippers (who were not parties to the suit) and the appellate Court remanded the suit on the ground that the plaintiff who was competent to institute the suit, could continue it. An appeal was filed against the order of remand and pending it the plaintiff died.

*Held*, that the worshippers who came on record for the first time in the appeal could not maintain the appeal and as the only person who could continue the suit was the plaintiff who is dead and as it is not a case where the legal representatives of the plaintiff could continue the suit, the order of remand has become inappropriate and should be set aside.

*S. Ramachandra Aiyar* for Appellants.

*E. Kuppaswami* for Respondents.

K. S.

King, J.  
11th September, 1940.

Ranganayakulu v. Baghayamma.  
A.A.A.O. No. 141 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 4 (A)—Woman creditor exempted under—Plea that creditor was benamidar—If open to judgment-debtor in execution proceedings.*

Where a mortgagee decree-holder is a woman exempted under S. 4 (A) of Act IV of 1938, a plea in execution proceedings, that the assignment of the mortgage to the decree-holder was a benafid transaction and that the real beneficial owners of the mortgage were men and therefore S. 4 (A) does not apply, is not open to the judgment-debtor, though it may be permissible in litigation between the alleged benamidar herself and the beneficial owners.

- K. Kameswara Rao and B. S. Ramachandra Rao for Appellant.
- V. Govindarajachari and S. Ramachandran for Respondent.

K.S.

Burn, J.  
18th September, 1940.

Natesa Ayyar v. Singaravelu Pillai.  
C.B.P. No. 24 of 1940.

*Madras Debt Conciliation Act (XI of 1936), S. 25—Stay of execution in respect of same debt—If can be granted more than once—Application for conciliation—If can be made more than once.*

Debtors cannot make more than one effective application for the conciliation of a particular debt under the provisions of the Madras Debt Conciliation Act. The existence of the provision in S. 7 by which an applicant can make a fresh application (if his application has been rejected on formal grounds) and the absence of any similar provision in S. 9 (when an application for conciliation has been dismissed on the merits) is conclusive on the point. Stay could not be ordered more than once under S. 25 in respect of the same debt.

(1939) 2 M.L.J. 727, followed.

Case-law discussed.

- R. Somasundaram for Petitioner.
- K. S. Desikan for Respondent.

K.S.

Pandrang Row, J.  
26th September, 1940.

Krishna Menon v. Calicut Bank.  
C.B.P. No. 621 of 1939.

*Practice—Decree against tarwad binding even on members not eo nomine parties—Declaration that decree was not binding—If can be obtained without cancelling the decree.*

Where a decree is binding on a member of a tarwad even though he is not eo nomine a party to that decree, unless that decree is set aside he cannot get any declaration that the decree is not binding on him.

20 Mad. 129 and I.L.R. 1940 Mad. 259, referred to.

N. Gopala Menon for Petitioner.

O. T. G. Nambiar instructed by King and Partridge for Respondent.

K.S.

Pandrang Row, J.  
26th September, 1940.

Ramaswami Goundar v. Sellappa Goundar.  
C.B.P. No. 1602 of 1939.

*Practice—Plaint deliberately framed to avoid payment of higher court-fee—Amendment—Permissibility.*

Where the plaintiffs deliberately intended to avoid payment of a higher court-fee, and for that purpose instituted the suit in the District Munsif's Court, and where no new facts have been discovered or any amendment necessitated by any technical plea raised by the defendants, the plaintiffs should not be allowed a *locus poenitentiae* to amend the plaint.

N R C

T. V. Ramasatha Aiyar for Petitioner.  
N. Somasundaram for Respondent.

K.S.

Pandrang Row, J.  
26th September, 1940.

Suryanarayana Joshi v. Subbi Reddi.  
O.B.P. No. 2160 of 1939.

*Practice—Amendment of plaint—Procedure.*

Where a plaintiff applies for amendment of the plaint, he cannot throw the burden on the court of deciding which part of his amended pleadings should be permitted and which part should be rejected. It is for the party to decide what amendments he wishes to make. The Court can only say 'yes' or 'no' to the request for permission to amend and cannot be asked to pick and choose between the various proposed amendments.

K. Kuppusami for Petitioner.

A. Bhujanga Rao and D. B. Krishna Rao for Respondent.

K.S.

Pandrang Row, J.  
27th September, 1940.

Durai Swamy Mudaliar v. Balasubbaraya Chetty.  
O. B. P. No. 2307 of 1939.

*Presidency Small Cause Courts Act (XV of 1888), S. 38—Decree without contest—Scaling down and amendment of decree under S. 19 of Madras Act IV of 1938—Application for retrial—Maintainability.*

A suit was not contested as the claim was admitted by one defendant and the other defendants remained *ex parte*. But subsequently the decree was scaled down and amended under Madras Act IV of 1938 after contest. An application by the debtor to the Full Bench for a new trial under S. 38 of the Presidency Small Cause Courts Act was rejected *in limine* on the sole ground that the application did not lie as the suit in which it was preferred was not contested. In revision,

*Held*, the application under S. 19 of Act IV of 1938 having been contested and the decree re-opened the suit must be deemed to have been contested and an application for retrial is maintainable.

O. Sarangarajan for Petitioner.

O. V. Athanathan for Respondent.

K.S.

King, J.  
10th October, 1940.

A. L. S. P. P. L. Subrahmanian Chettiar  
by agent Narayanan Chettiar v.  
Muthusami Goundan and others.  
O. M. S. A. No. 106 of 1939.

*Limitation Act (IX of 1908), Art. 182, cl. (5)—"In accordance with law"—What is?*

A suit on a promissory note was originally decreed *ex parte* on 1st October, 1929, against three defendants. Subsequently on the application of the first defendant the *ex parte* decree was set aside against him alone on his depositing a certain amount. Later on a revised decree was passed on 27-6-1930 against all the defendants for a certain amount, after giving credit to the deposit in Court made by the first defendant and drawn out by the plaintiff. Thereafter the decree-holder proceeded to execute the decree against the first defendant claiming by mistake the larger amount awarded under the decree of 1-10-1929 and also filing a certified copy of the said decree. When the decree-holder discovered the mistake, he hastened to rectify the same and have the sale of the first defendant's properties which had meanwhile taken place set aside.

Subsequently on 19-7-1937 the decree-holder filed an execution petition against defendants 2 and 3 who pleaded the bar of limitation on the ground that the previous petitions against the first defendant would not save limitation.

*Held*, reversing the decisions of the Courts below that the liability of the defendants was there all the time, that the decree-holder was all along seeking to enforce the liability of the defendants and that the claim for excessive amount and the non-mention of the later decree of 27-6-1930 would not make the petitions be otherwise than in accordance with law within the meaning of Art. 182, cl. (5) of the Limitation Act.

The principle of the decisions in 88 L.W. 877, A.I.B. 1936 Pat. 26, (1940) M.W.N. 547 and 59 Bom. 1, followed.

K. V. Ramachandira Aiyar for Appellant.

V. Ramasami Aiyar for Respondents.

K.S.

Wadsworth, J.  
11th October, 1940.

V. L. Mannadiar v. P. S. Banga Aiyar.  
O.B.P. No. 2122 of 1939.

*Debt Conciliation Act (XI of 1936), Ss. 4 and 25—Single creditor applying for settlement of debt—Judgment-debtor applying for stay of execution by other creditors—Maintainability.*

When a single creditor has filed an application before the Debt Conciliation Board for the settlement of his debt, the debtor has no right to apply for stay of proceedings under S. 25 of the Debt Conciliation Act in respect of any debt of any other creditor pending in the Civil Court though the application of the creditor before the Debt Conciliation Board may involve an enquiry into and settlement of the debts of all creditors.

K. S. Sankara Aiyar and T. B. Balagopal for Petitioner.

P. S. Narayanaswami Aiyar for Respondent.

S.V.V.

Wadsworth and Patanjali Sastri, JJ.  
15th October, 1940.

Gurunatha Pillai v. Palaniandi Pillai  
and others.  
O.M.A. No. 55 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 19 Proviso—Construction.*

It was contended that the Proviso to S. 19 of Act IV of 1938 would not apply to amounts recovered in execution of a compromise decree (which did not originally provide for costs) but subsequently credited to the decree which as amended provided for costs.

*Held*, that the contention could not be accepted and that the funds resulting from the execution sale should be deemed to have been held in suspense till the amendment of the decree and then paid in part satisfaction thereof. They must therefore be regarded as amounts recovered.....in respect of "any such decree" within the terms of the Proviso to S. 19.

M. S. Venkatarama Ayyar for Petitioner.

K. Bhashyam Ayyangar and B. Desikan for Respondents.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
15th October, 1940.

Kodali Venkayamma v. Mamidi-  
paka Ramakotayya.  
O.B.P. No. 1073 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 8, cl. (2)—Applicability—Appropriation of open payments made prior to 1-10-1937—Awarding of counter interest on payments made—Effect.*

When on open payments made in 1932 counter interest was awarded and a fresh promissory note was executed in 1934, after deducting the payment with counter interest,

*Held*, (1) that the mere fact that counter interest was awarded on open payments does not indicate that the payment should be treated as payments towards principal;

(2) that when a fresh promissory note was executed after deducting the payments with counter interest, it must be deemed that the appropriation was made at the time of the fresh promissory note;

(3) that the interest outstanding at the time of the fresh promissory note must be deemed to have been satisfied by the payment, and the balance if any appropriated towards principal;

(4) and that the onus lies heavily on the debtor to prove that the interest was outstanding on 1-10-1937 to get the benefit of S. 8 of Madras Act IV of 1938.

Y. G. Krishnamurthi for Petitioner.

K. Krishnamurthi for Respondent.

K. S.

*Wadsworth and Patanjali Sastri, JJ.*

15th October, 1940.

Tadikamalla Subbarayudu v.

Dumpa Venkateswarin.

C.B.P. No. 1218 of 1940.

*Madras Agriculturists Relief Act (IV of 1938), S. 8 (f)—Applications—Counter interest allowed on prior open payments—If sufficient to prove appropriation towards principal.*

The mere fact of the allowing of counter interest on prior open payments at the time of a renewal is not sufficient to establish an appropriation of those payments to principal. Decision in C.B.P. No. 1076 of 1939 followed.

J. Krishnamurthi for Petitioner.

K. Krishnamurthi for Respondent.

K.S.

[F.B.]

*The Chief Justice, King and*

*Patanjali Sastri, JJ.*

16th October, 1940.

Ramachandran (minor by

next friend) v. Santarnam (minor

by guardian) and another.

C.B.P. No. 579 of 1937.

*Limitation Act (IX of 1908), S. 20—Mortgagee directed to discharge mortgagor's debt due on a promissory note—If "agent duly authorised" to make part payment of principal or interest to save limitation under S. 20.*

The maker of a promissory note directed his mortgagee to discharge from out of the mortgage consideration the debt due to the plaintiff under the promissory note. The mortgagee made two payments on 29-5-1933 and 16-7-1934 towards interest and duly endorsed the payments on the promissory note, but failed to pay the balance. In a suit on the promissory note filed within three years from the last of such endorsements,

*Held* (*Patanjali Sastri, J.*, dissenting), that an authority to discharge a debt does not include an authority to make part payments and keep alive the debt and the suit is barred by limitation.

28 M.L.J. 509 and 51 L.W. 453, approved.

57 I.A. 1, distinguished.

K. Sanjeeva Kamath for Petitioner.

K. Vital Rao for the 1st Respondent.

K.S.

*Pandrang Row, J.*  
24th September, 1940.

*Mangamma v. Paidayya.*  
S.A. No. 1010 of 1937.

*Civil Procedure Code (V of 1908), S. 100—Second appeal—Practice—Judgment of lower appellate Court not dealing with reasoning of lower Court as to credibility of witnesses—If ground for second appeal.*

Where the lower appellate Court dealt with the entire evidence in a few sentences and made no reference to the documentary evidence on the side of the plaintiff and gave no reason for rejecting the conclusion of the trial Judge as regards the credibility of the witnesses examined on the side of the plaintiff, such a judgment does not satisfy the requirements of law and must be deemed to be a judgment vitiated by an error in procedure. As a matter of law the lower appellate Court was bound not to go against the opinion of the trial Judge who had an opportunity of having the witnesses before him in deciding upon the credibility of the oral evidence in the case. Interference with conclusions of the trial Judge in matters of this kind must be deemed erroneous in law. A second appeal is competent in the circumstances.

*Kasturi Seshagiri Rao* for Appellant.

*Y. Suryanarayana* for Respondent.

K.S.

*Pandrang Row, J.*  
27th September, 1940.

*Ramanathan Chettiar by guardian v.*  
*Somasundaram Chettiar.*

O.B.P. No. 2378 of 1939.

*Civil Procedure Code (V of 1908), O. 82, r. 15—Application after final decree for appointment of guardian ad litem of mentally infirm defendant—Application necessitated by need to apply under S. 19 of Madras Act IV of 1938—Necessity to hold judicial inquiry and allow evidence to be adduced.*

The petitioner, the mother of the judgment-debtor who was mentally infirm, applied under O. 82, r. 15, C. P. Code, for the appointment of a guardian *ad litem* to apply for scaling down the decree debt. The petitioner was desirous of adducing evidence especially in the shape of a doctor's certificate, but no opportunity was given for this purpose as the lower Court was of opinion that the production of the medical certificate would not advance the case any further. In revision,

Held, that as the effect of the dismissal of the application would be to prevent the application of the provisions of Madras Act IV of 1938 to a case to which they may apply, it was incumbent on the Court to hold a judicial inquiry and allow the parties to adduce evidence.

*V. Ramaswami Aiyar* for Petitioner.

*A. P. Viswanatha Sastri* for Respondent.

K.S.

*Wadsworth, J.*  
30th September, 1940.

*Visalakshi Ammal v. Anikadan Pokker.*  
O.B.P. Nos. 1470 and 1471 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 4 (h)—Decree assigned to a woman before 1-10-1937—Applicability of S. 4 (h) of Act IV of 1938.*

The fact that a woman acquired a debt by an assignment before the Act came into force is irrelevant and she is exempt from the operation of the scaling down provisions of the Act.

*K. P. Ramakrishna Aiyar* for Petitioner.

K.S.

N R C

*Mookett, J.*  
3rd October, 1940.

*Kadirvelu Chettiar v. Kempu Chettiar and others.*  
O.B.P. No. 820 of 1939.

*Civil Procedure Code (V of 1908), S. 144—Decree-holder assigning decree to third party during pendency of revision petition against decree—Third party realising decree amount—Re-trial ordered in revision—Decree for smaller amount in re-trial—Restitution.*

S. 144 of the Code of Civil Procedure is worded in the most comprehensive terms and it should be widely construed. Its object is to put right what was originally an error of the Court and to restore the parties to the position they would have occupied. The word 'party' should be given a wide meaning, so as to include persons who would become subsequently concerned.

Thus where a decree-holder when a revision petition was pending assigns the decree to a third party who realises the amount and in a re-trial a smaller amount is decreed a claim to restitution as against the original decree-holder arises.

The fact that a party to a suit (a plaintiff) who has obtained a decree wrongly against another person prefers to get the immediate benefit of it by a sale or transfer, rather than waiting to execute against the party, in no way affects the right of the original party defendant to recover in restitution what he has paid over under pressure of the original erroneous decree. The fact that he paid it over to a nominee of the original plaintiff is wholly irrelevant to his right to recover against the person who caused him to make that payment, namely the original plaintiff.

*V. T. Ranganam Ayyangar and K. Ramanammi Ayyangar* for Petitioner.  
*M. S. Venkatarama Ayyar* for Respondent.

K.S.

*Wadsworth, J.*  
3rd October, 1940.

*Thangaprakasammal v. Ramalingam Pillai.*  
O.B.P. No. 1455 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 14—Husband and wife joint promisors—Applicability of S. 14 to wife's debt.*

Where the husband and wife are joint promisors, so long as her husband is alive since she has no share in the joint family property it would be apparently impracticable to apply S. 14 to her indebtedness.

*K. Venkataramani* for Petitioner.

*M. Lakshmanan Nayak, M. B. Venkataraman and T. K. Rajagopalan* for Respondent.

K.S.

*Abdur Rahman, J.*  
11th October, 1940.

*Tirupathi Rao v. Prahladrai Banwari Lal.*  
O.B.P. Nos. 596 and 597 of 1938.

*Contract Act (IX of 1872), S. 16—Wagering contract in Bombay—Money paid under—Recovery—Prohibited under Bombay Act III of 1865—Suit if maintainable in Madras.*

Where no suit is competent in Bombay to recover the amount paid to a defendant under Bombay Act, III of 1865 in respect of a wagering contract, the suit cannot be instituted in Madras. The words of S. 1 of the Act are that no suit shall be *alleged* and not that no suit shall be instituted. The Courts in Bombay having jurisdiction to try the suit, the suit cannot be instituted in Madras.

*V. Visyanna* for Petitioner.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*  
15th October, 1940.

*Narayanan Chettiar v. Ottu Veera  
Goundan.*

A.A.O. No. 72 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 19—Promissory note, dated 4-1-1931 and letter of guarantee in respect of the note by others dated 7-8-1938—Compromise decree—Scaling down—Principles.*

Defendants 1 and 2 executed a promissory note on 4-1-1931 and defendants 3 to 5 gave a letter of guarantee, dated 7-8-1938, in respect of the debt. There was a compromise decree for Rs. 5,000 for the debt including interest and costs against all the defendants. Subsequently defendants 1 and 5 applied by separate applications for scaling down the decree debt.

*Held*, (1) that the 5th defendant was entitled to have his liability under the letter of guarantee scaled down with reference to S. 9 and not with reference to S. 8 of the Act;

(2) that a decree on a compromise is substantially the same as a decree on any other contract and to the extent to which the compromise is a renewal of a pre-existing debt the decree has to be scaled down with reference to the principal originally advanced. (1940) 2 M.L.J. 298, followed;

(3) that it is not proper for the Court to reopen the compromise, tax the costs and appropriate the payment first towards the costs under the proviso to S. 19. (1940) 2 M.L.J. 476, followed;

(4) that the proviso to S. 19 applied only to the costs as originally decreed and not to costs in execution. (1940) 2 M.L.J. 685, followed.

T. P. Gopalakrishnan for Petitioner.

C. A. Seshagiri Sastri for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*  
16th October, 1940.

*Sebapathi Mudaliar v.  
Rajarathnam Mudaliar.*

A.A.O. No. 661 of 1938.

*Madras Agriculturists Relief Act (IV of 1938), S. 8, Explanation—Scope—Son estopped from questioning liability under a mortgage after partition by his father which he had attested—Subsequent mortgage by the son of his own property in discharge of father's mortgage debt—If removal of earlier debt.*

Although it had been held that a son was estopped from disputing the liability of his property under a mortgage by his father after partition by reason of his attestation of the mortgage, it cannot be said that a fresh mortgage executed by the son alone binding only his own property and discharging his father's mortgage is merely a renewal of the son's own liability. There is a complete novatio which cannot be treated as a renewal by the same debtor.

A. V. Viswanatha Sastri for Appellant.

S. Muthiah Mudaliar for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*  
17th October, 1940.

*P. Satyanarayanamurthi v.  
Setti Ganiseti and others.*

O.M.A. No. 118 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 19—Final decree of 19-8-1937 on mortgage—Private sale of some items of hypotheca on 9-10-1937—Vendee directed to pay decree-holder—Balance remaining unpaid by vendee, a non-agriculturist—Debt scaled down to zero by operation of damdupat rule—Vendee if can be impleaded and made liable for the debt as a non-agriculturist.*

After final decree on a mortgage some items of the hypothec were sold on 9-10-1937 and the vendee was directed to pay the mortgagee decree-holder. A portion of the consideration remained unpaid when the debtor applied for entering up satisfaction of the decree, (more than twice the amount of the principal and costs having been paid towards the decree). The creditor sought to implead the vendee, a non-agriculturist, and make him liable for the balance due under the decree applying the principle laid down in O.B.P. No. 1584 of 1938.

*Hold*, that the vendee cannot be impleaded as he had no separate rights to agitate in the execution of the decree, that he was not party to the decree and scaling down cannot be restricted to the judgment-debtor agriculturist's interest in the property in his possession inasmuch as that will result in splitting up of the decree against the only party to the decree, and that the principle in O.B.P. No. 1574 of 1938 will not apply in that the vendee was not a party to the suit.

P. Satyanarayana Rao and M. Balakrishnamurthi for Appellant.  
V. Vyyanna for Respondent.  
K.S.

Wadsworth and Patanjali Sastri, JJ.  
17th October, 1940.

Nataraja Goundan v. Catholic  
Syrian Bank, Ltd., Trichur.  
C. M. A. No. 182 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 19—Decree for future instalments under a chit; fixing the principal—Reduction of the principal in scaling down—If permissible.*

Under S. 19 of Act IV of 1938 the Court has no jurisdiction to reduce the principal of a decree debt except on the grounds laid down in the Act. A decree debt cannot be reduced merely on the basis that the decree did not give effect to a contention which might have been but was not raised. Accordingly where a decree fixed as the principal the total amount of the future instalments under a chit, the principal so fixed cannot be reduced in proceedings for scaling down.

K. V. Ramakrishna for Appellant.  
E. Viswanathan and N. D. Varadarathar for Respondents.  
K.S.

Wadsworth and Patanjali Sastri, JJ.  
21st October, 1940.

Nadaraja Pillai v. Ranga-  
swami Karamundar.

C. M. A. Nos. 325 and 438 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 19—Sale in execution of decree with permission to decree-holder to bid and set off—Sale prior to 1-10-1937—Application for scaling down decree amount—Maintainability, pending application to set aside sale under O. 21, r. 90, C.P.C.*

In execution of a decree on two promissory notes the judgment-debtor's properties were sold in execution prior to 1-10-1937 and purchased by the decree-holder who had obtained leave to bid and set off the purchase-money towards his decree amount. An application to set aside the sale under Civil Procedure Code, O. 21, r. 90 was pending when the defendants applied under S. 19 of Act IV of 1938 for scaling down the debt.

*Hold*, that such an application is maintainable and the decree is not satisfied before the confirmation of the sale by the mere purchase and set off by the decree-holder under O. 21, r. 72, C.P.C.

Case-law reviewed.

The Advocate-General (Sir A. Krishnaswami Aiyar), C. A. Seshagiri Sastri and K. S. Desikan for Petitioner.

K. Rajah Aiyar and K. S. Rajagopalachari for Respondents.  
K.S.

*Pandrang Row, J.*  
23rd September, 1940.

*Velayudha Maistry v. Mariammal.*  
S. A. No. 514 of 1939.

*Licence—Trees planted by licensee—Right to remove on termination of licence.*

Trees planted under a licence do not go with the land and the person who planted the trees is entitled to cut and remove them; but he is to restore the land in the condition in which it was before the trees were planted.

The principle applicable to removal of buildings on another man's land would also apply to trees. 24 Mad. 47 (F.B.), referred to.

*K. S. Desikan* for Appellant.

*V. Ramaswami Aiyar* for Respondent.

K.S.

*King, J.*  
24th September, 1940.

*Sambasiva Ayyar v. Dharmi Ammal.*  
A.A.A.O. Nos. 127 & 136 of 1939.

*Provincial Insolvency Act (V of 1920), S. 51 (1)—Date of admission of petition—Benefit of the execution—Meaning.*

The date when the Court accepts an insolvency petition as having been validly presented is the date of the admission of the petition. Where properties were sold separately and their sale proceeds were realised separately, the sale of each lot was completed when the whole of the balance of the purchase money in regard to each lot was deposited in Court. Where money is realised for one of the lots after the admission of the insolvency petition the official receiver is entitled to it. 'Benefit of the execution' means the sum realised less the costs of execution.

57 Mad. 830=63 M.L.J. 402 and (1939) 1 M.L.J. 205, not followed.

Decision of Wadsworth, J., in C.M.A. No. 175 of 1937 [(1939) 2 M.L.J. (N.R.C.) 27], followed.

*B. Sundaralingam and A. V. Viswanatha Sastri* for Appellants.

*T. K. Subramania Pillai* for Respondents.

K.S.

*Wadsworth, J.*  
8th October, 1940.

*Parameswara Menon v. Kotana Narayana Menon.*  
O.R.P. No. 1401 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 23—Decree of foreign court—Execution in Madras Presidency—Application under S. 23 for stay—If can be granted.*

Where the holder of a decree of a Court of the Cochin State executed his decree by the sale of properties in British India, the judgment-debtor cannot claim to be an agriculturist entitled to the benefit of Act IV of 1938. The Court which has to scale down the decree under S. 19 will be the foreign Court, to which however the Act has no application.

*K. Kuttikrishna Menon* for Petitioner.

Respondent not represented.

K.S.

*Wadsworth, J.*  
7th October, 1940.

*Ramalingam and another v. Thummalapalli  
Peda Kottayya and another.*  
O.R.P. Nos. 1039 and 1040 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 23—Applicability.*

In S. 23 of Madras Act IV of 1938, the words "property in which an agriculturist had an interest has been sold" must refer to the state of affairs at the time of the sale and cannot cover a case in which the agriculturist had parted with his interest in the property sold long before the sale. Where the property sold belonged to non-agriculturist defendants, S. 23 will have no application.

*P. Somasundaram and P. Suryanarayana* for Petitioners.

*V. Viswanatha Sastri* for Respondent in O.R.P. No. 1039 of 1939.

K.S.

N R C

*Wadsworth and Patanjali Sastri, JJ.*  
22nd October, 1940.

*Chockalingam Chettiar v.*  
*Muthurama Chettiar.*  
O.M.A. No. 43 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 8, Proviso C—Joint family—Assessment of manager—Effect.*

If the assessment in respect of joint family property was levied upon the manager of the family in his capacity as manager, then such assessment is sufficient to disqualify the family as a whole from the status of an agriculturist.

*V. Ramaswamy Iyer* for Appellant.

*K. Rajah Ayyar and N. G. Krishna Ayyangar* for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*  
22nd October, 1940.

*Parameswara Aiyar v. Narayanan Nambudiri.*  
O.R.P. No. 2563 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 15 (1)—Assignment by non-agriculturist to agriculturist after coming into force of the Act—Rent due by such assignee—If falls under S. 15 (1).*

Where at the commencement of the Act the rent was payable by a non-agriculturist in respect of the suit land the mere fact that such land has been assigned after the Act came into force to an agriculturist cannot give the agriculturist the benefit of S. 15.

*K. P. Ramakrishna Aiyar* for Petitioner.

*D. H. Nambudripad* for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*  
23rd October, 1940.

*Balasubramania Goundan v.*  
*Muthukumara Pillai.*  
O.M.A. No. 47 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 19, Proviso—Construction.*

Before applying the provisions of the Act to a decree, it is necessary first to satisfy the requirements of the proviso by adjusting from payments already made (whether made before or after 1-10-1937) towards the decree an amount necessary to satisfy the decree for costs. This right to adjust towards the cost of the decree is not subject to appropriations towards interest made before 1-10-1937.

*E. Vaidyanathan* for Appellant.

*N. Somasundaram* for Respondent.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*  
24th October, 1940.

*M. Munirathinam Iyer v. B. A. Rama  
sahagiri Iyer and others.*  
O.M.A. No. 553 of 1938.

*Madras Agriculturists' Relief Act (IV of 1938), Ss. 8 and 19—Entering up part satisfaction of decree—How far appropriation towards decree.*

A payment which has been definitely appropriated to the decree by the recording of part satisfaction cannot be regarded as unappropriated payment. The burden lies on the debtor to show that interest was outstanding on 1-10-1937 and unless he shows that a payment has not been appropriated towards interest the appropriations cannot be re-opened.

*A. Seshachariar* for Appellant.

*N. Sivarami, P. N. Sundararajan and D. Noronha* for Respondent.

K.S.

Venkataramana Rao, J.  
8rd October, 1940.

Chennakrishna Chettiar v. Secretary of  
State for India in Council by  
Collector of Salem.  
S.A. No. 190 of 1938.

*Agraharam land—Right to irrigation in respect of—If can be acquired by prescription against the Crown.*

Where land which is the subject-matter of the suit is not ryotwari but agraharam land, in the face of S. 15 of the Easements Act, S. 2 of that Act cannot be invoked for defeating the claim of the plaintiff on the ground that no prescription can be pleaded against the Crown.

The decision in 71 M.L.J. 268 is applicable to the case of a ryotwari pattadar but not to the case of an inamdar.

A right to water acquired by prescription can be pleaded as an engagement within the meaning of the Irrigation Cess Act. 48 Mad. 529 (P.O.), followed.

An inamdar or zamindar can acquire a right against the Crown by prescription by enjoyment for over sixty years.

B. Sivarama Rao and T. Krishna Rao for Appellant.  
K. Srinivasa Rao for Respondent.

K.S.

Wadsworth, J.  
8th October, 1940.

Kothandarama Chettiar v. Adi Ammal.  
O.B.P. No. 1060 of 1940.

*Court-fees—Application for probate of a will—Allowance payable in pursuance of maintenance deed created during testator's lifetime—Maintenance payable to widow under the will—Value of—If to be deducted from gross value of assets for purpose of Court-fee.*

In so far as a will leaves an annuity to a widow, that annuity is tantamount to a legacy and the value of it cannot be subtracted from the assets of the deceased which are subject to Court-fee on an application for probate. But where maintenance or allowance is claimed under a deed executed by the testator himself and given effect to during his lifetime and imposes a charge on certain properties the capitalised value of the allowance settled in the deed is a debt binding on the estate and must be deducted from the assets upon which Court-fee is payable. The value of the allowance will be governed by the expectation of life and it can be calculated by adopting some actuarial form.

Ch. Baghava Rao for Petitioner.  
The Government Pleader (B. Sivarama Rao) and K. Krishnaswami Aiyangar for Respondent.

K.S.

King and Venkataramana Rao, JJ.  
11th October, 1940.

Ukkali v. Sivaramakrishna Pattar.  
S.A. No. 205 of 1936.

*Malabar Tenancy Act (XIV of 1930), S. 17—Renewal of kanom—If to be on same terms.*

The word 'same' in S. 17 connotes a renewal of the kanom on the same terms as the previous kanom. If the landlord declines to grant a renewal on payment of the proper renewal fee the tenant can seek the aid of the Court and the Court should grant a renewal of the kanom only on the same terms as the previous kanom.

C. Unnikanda Menon for Appellant.  
B. Srinivasa Aiyar for Respondent.

K.S.

Mookett, J.  
11th October, 1940.

Serukulam Swami, etc. v. Serukulam Pannai  
Annadhana Chattram.

O.B.P. Nos. 2858 & 2859 of 1939.

*Court-Fees Act (VII of 1870), S. 7 (iv) (a) and S. 7 (v) (b)—Trustee seeking to recover property in his own right—Provision applicable.*

N R C

Where a trustee seeks recovery of property in his own right S. 7 (iv) (a) of the Court-Fees Act does not apply, but S. 7 (v) (b) is the relevant provision.

*R. Ramamoorthi Ayyar* for Petitioners.  
The Government Pleader for the Crown.  
K.S.

*Wadsworth and Patanjali Sastri, JJ.*  
24th October, 1940.

*Pentala Venkayya v. Palepu  
Chinna Subbayya and others.*  
O.M.A. No. 591 of 1938.

*Madras Agriculturists' Relief Act (IV of 1938), Ss. 9, 11 and 19—Allowing counter interest on payments—Inference—Decree for costs after 1—10—1932—Scaling down.*

The mere allowing of counter interest on payments is nothing more than a method of calculation and cannot indicate an intention to adjust those payments to principal and not towards interest.

Decision in O.R.P. No. 1076 of 1938, applied.

A decree allowing interest on costs passed after 1—10—1932 must itself be scaled down as a debt falling under S. 9. It will carry interest at 5 per cent. per annum up to 22—3—1938 and thereafter at the decree rate which is less than the 6 1/4 per cent. specified in S. 12.

*V. Suryanarayana* for Appellant.

*K. Kotayya* for Respondents.  
K.S.

*Lakshmana Rao, J.*  
25th October, 1940.

*Public Prosecutor v. Panchakarla Sooramma.*  
Crl. App. No. 457 of 1940.

*Madras Prevention of Adulteration Act (III of 1916), Pt. 27 and 29—Adding water to milk—Offence—Purity of milk—If material.*

Rule 27 of the rules framed under S. 20 of the Madras Prevention of Adulteration Act provides that no person shall add any water to milk intended for sale or offer for sale milk to which any such addition has been made. Rule 29 makes a breach of the rule punishable with a fine and where there is such a breach the purity of the milk is immaterial and an accused cannot be acquitted on the ground that the milk was not otherwise adulterated.

Public Prosecutor in person.

Respondent not represented.

K.S.

*Lakshmana Rao, J.*  
25th October, 1940.

*The Crown Prosecutor v. Ahmed Moldeen.*  
Crl. Appeal No. 589 of 1938.

*Madras City Police Act (III of 1888), Ss. 37 (2) and 45—Keeping or using a house for the purpose of gaming—Gist of the offence.*

That bets were received by agents outside the house does not by itself negative the presumption of use of house for gaming purposes. S. 37 (2) of the City Police Act which makes it an offence to keep or use a house for the purpose of gaming on horse races, does not require the house to be kept or used for the purpose of betting with persons resorting thereto as under the English Act and *Bradford v. Dawson*, (1897) 1 Q.B.D. 807, is not in point.

Appellant in person.

*K. P. Sarcothama Rao*, and *Muhammad Mohab Ali* for Respondent.  
K.S.

*Wadsworth and Patanjali  
Sastri, JJ.*

28th October, 1940.

*B. Venkataswamier v. T. N. Ramaswamier  
and others.*

O.M.A. No. 36 of 1940.

*Madras Agriculturists' Relief Act (IV of 1938), S. 19—Payments before 1—10—1937 towards debt—Burden of proof as to appropriations.*

Where it is conceded that certain payments made by the debtor had been adjusted towards the debt prior to 1—10—1937, the adjustments must have been in reduction of either interest or principal. If the debtor is

not able to show that they are in reduction of principal leaving interest outstanding on 1-10-1937, he must fail, as the burden is on him to show that interest was outstanding on 1-10-1937 and was wiped out by S. 8 of the Act. On this matter there is no difference in principle between the cases of bankers charging compound interest and other creditors charging simple interest.

S. Ramaswami Aiyar for Appellant.  
T. M. Ramaswami Aiyar for Respondents.

K.S.

Burn and Mockett, JJ.  
28th October, 1940.

Subba Reddi v. Eswara Reddi and others.  
C.M.A. No. 595 of 1938.

*Provincial Insolvency Act (V of 1920), S. 85—Petition by another creditor for annulment of adjudication—Allegation that no debt was due to the petitioning creditor and that adjudication was result of collusion between insolvent and petitioning creditor—Delegation of inquiry to Official Receiver—Propriety.*

A petition under S. 85 of the Provincial Insolvency Act for annulment of adjudication was filed by another creditor who alleged that, there was no debt owing to the petitioning creditor and the adjudication ought not to have been made as it was the result of collusion. The District Judge after admitting the documents filed forwarded the records to the Official Receiver to inquire into the matter and record the deposition of witnesses. Acting on that evidence the District Judge annulled the adjudication. On appeal, objection was taken for the first time to the procedure adopted in delegating the taking of evidence to the Official Receiver. The respondent contended that the objection ought to have been taken at the earliest opportunity and should not be allowed to be raised for the first time on appeal and that on the authority of 22 C.W.N. 700 it was open to the District Judge to "direct the Official Receiver to enquire and report for his own information".

Held, that the District Judge had no power to delegate to the Official Receiver the duty to inquire into the facts of the case and the fictitious character of the debt due to the petitioning creditor.

Kasturi Seshagiri Rao for Appellant.  
S. S. Bharadwaj for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
31st October, 1940.

Venkataranga Reddi v. Parakuchinna Sithanna.  
C.M.A. No. 51 of 1939.

*Execution proceedings—Constructive res judicata barring judgment-debtor—Sons of such judgment-debtor if also barred.*

An order for execution made after notice to the judgment-debtor who does not appear and offer any objection precludes him from raising a plea of limitation in subsequent proceedings even though the application on which the order was passed does not fructify and is eventually struck off or dismissed. 24 Mad. 669, followed. 58 All. 218 (F.B.), dissented from.

But the sons of the judgment-debtor when proceeded against in execution under the pious obligation theory will not be precluded from pleading the bar of limitation by *res judicata*. I.L.R. 18 Luck. 61 (P.O.), followed. (1940) 1 M.L.J. 868, distinguished.

K. Srinivasa Rao for Appellant.  
P. Basu Reddi for Respondents.

K.S.

*Patanjali Sastri, J.*      *Audiseahayya v. Venkataswami and another.*  
1st November, 1940.      C.B.P. No. 194 of 1933.

*Madras Village Courts Act (I of 1899), Ss. 18 and 78—Suit for recovery of movables or their value Rs. 50—Jurisdiction of Village Court to try—Order of District Munsif under S. 78 reversing the Village Court's order—If open to further revision by High Court under C. P. Code, S. 115.*

A revision by the High Court is competent against orders of District Munsifs under S. 78 of the Village Courts Act. 53 M.L.J. 131, relied on and 34 I.C. 508, distinguished.

A suit for the recovery of movables is a suit for recovery of personal property within the meaning of S. 18 of the Village Courts Act and the Village Court has jurisdiction to entertain such a suit if the value is not over Rs. 50.

*Kasturi Seshagiri Rao* for Petitioner.

*K. Venkateswaran* for Respondents.

K.S.

*Wadsworth and Patanjali Sastri, JJ.*      *Ramasubbier v. Ramier and others.*  
C.M.A. Nos. 101 and 160 of 1940.

*Madras Agriculturists' Relief Act (IV of 1938), S. 8, Explanation—Scope.*

On 14-8-1922 P and his sons E and V executed a promissory note for Rs. 7,000 in favour of S on whose death his two sons X and Y divided the debt between them and in pursuance thereof, the debtors E and V executed on 19-8-1925 two promissory notes one to X for Rs. 4,900 and another to Y for Rs. 2,600. On 18-8-1928 E and V and the other two sons of P, who had not joined in the execution of the earlier promissory notes executed two promissory notes for Rs. 5,400 and Rs. 2,200 to X and Y respectively in renewal of the two promissory notes of 1925. In June, 1931, V separated himself from his brothers, and the other three brothers who continued joint, executed promissory notes for Rs. 5,968 and Rs. 2,425 respectively in settlement of the debts due under the notes of 1928. X and Y obtained decrees on 16-9-1933 and 6-2-1933 on their respective promissory notes. The lower Court scaled down the decrees with reference to the principal sum of the promissory note of 14-8-1922 apportioning the amount scaled down between the two decree-holders in the ratio of Rs. 4,900 to 2,600. On appeals by the decree-holders,

*Held*, (1) that the various notes were executed on behalf of the joint family of P and his sons, and the debtors were substantially the same being the joint family. (1940) 2 M.L.J. 651, followed;

(2) that the creditor in respect of each set of promissory notes executed subsequent to the partition in the creditor's family is the same, namely X and Y respectively. The debt due under each of these decrees can be traced back through successive renewals to the two promissory notes of 14-8-1922;

(3) the earliest note of 14-8-1922 having been executed to S the father, and the debt having been split up at the subsequent partition between X and Y cannot be said to be renewed or included in a fresh document within the meaning of the Explanation to S. 8, although the sums for which the later promissory notes were executed were equal in the aggregate to the original debt. The scaling down process will therefore have to stop with and not go beyond the two promissory notes in favour of X and Y respectively, of 19-8-1925.

*T. M. Ramaswami Aiyar* for Appellants.

*B. C. Seshachala Aiyar* for Respondents.

K.S.

The Chief Justice and Patanjali Sastri, J.  
2nd October, 1940.

Raja of Vislanagarah &  
Narayanaraja.  
C.B.P. No. 725 of 1937.

*Madras Estates Land Act (I of 1908), S. 25—Agreement by ryot to pay a premium—Ryot let into possession—Landlord, if can recover the premium afterwards.*

Where a ryot has agreed to pay a premium and has been let into possession before making the payment, the landholder cannot recover the amount from him afterwards. The ryot may pay the premium if he chooses but he cannot be held liable to pay. There is no liability after entry.

K. Kuttikrishna Menon for Petitioner.

Respondent not represented.

K.S.

Pandurang Bow and Abdur Rahman, JJ.  
11th October, 1940.

Lakshminarasimhacharyulu v.  
McLaurin High School,  
Cocanada.

Appeal No. 209 of 1938.

*Master and serooni—Contract of service—Provision that appointment is "permanent" and will not "ordinarily" be terminated—Construction.*

Where a contract of service provided that the appointment was permanent and will not ordinarily be terminated by the manager, and the employee's services were dispensed with on the ground of "financial stringency" in the employer institution, in a suit for damages for breach of contract,

Held, it would not be every financial stringency that would come under the definition of other than 'ordinary' but it must be of a sufficiently grave character as to necessitate the termination of the contract with the plaintiff and the burden is on the employer to prove that there was such an extraordinary financial stringency.

V. Govindarajachari and D. Suryaprakasa Rao for Appellant.

The Advocate-General (Sir A. Krishnaswami Aiyar) and D. Narasimaji for Respondent.

K.S.

The Chief Justice and Krishnaswami  
Ayyangar, J.  
16th October, 1940.  
*Gift deed—Construction.*

Jayalakshmi Ammal v. Mysapore  
Hindu Permanent Fund.  
C.C.C.A. No. 20 of 1939.

A donor after reciting that she had given the properties as stridhanam to her grand-daughter proceeded to state as follows: "She shall take possession of the said house on the said date, collect the rent thereof, discharge the debt (a debt owed by the donor) and enjoy the same; and the said property shall after her be enjoyed by the male issues or the female issues of the donee, from son to grandson and so on hereditarily with right to gift, exchange or sell the same."

Held, that the gift conferred an absolute estate and the words 'after her' are to be regarded as words of inheritance and not limitation.

T. C. A. Bhasiyam and T.C.A. Thirumalaachari for Appellant.

A. Venkatarubba Mudaliar for Respondent.

K.S.

The Chief Justice and Krishnaswami  
Ayyangar, J.  
17th October, 1940.

Gaffar Khan v. Syed Noor.  
C.C.C.A. No. 36 of 1939.

*Limitation Act (IX of 1908), Art. 62—Action for recovery of money stolen—Limitation.*

Where a person has lost money by theft he can sue the thief for the recovery of the money quite apart from the crime but if he does, the suit must be framed as one for money had and received, in which case it will

be governed by Art. 62 of the Limitation Act which expressly relates to suits for money had and received.

49 Mad. 468 (F.B.), distinguished.

*Obiter*: The English Law as to suspension of civil remedy until the felon has been convicted is not applicable to India as there is no distinction between a misdemeanour and a felony.

E. Duraiswami Aiyar and E. D. Jayaraman for Appellant.

Rafiqul Ahmad for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
17th October, 1940.

V. Gundarayudu v. K. Seshayya  
and others.

C.M.A. No. 83 of 1939.

Madras Agriculturists' Relief Act (IV of 1938), S. 8, Explanation—  
"Assignee of creditor"—if "some creditor".

Where it was argued that for the purposes of the explanation to S. 8, the expression "same creditor" meant the identical person and cannot be interpreted in the light of the definition to include the assignee of the original lender;

Held, that the contention could not be accepted.

O.R.Pa. Nos. 618 and 140 of 1939, approved.

Ch. Raghava Rao for Appellant.

A. Lakshmayya for Respondents.

K.S.

The Chief Justice and Krishnaswami  
Ayyangar, J.

Kunyl Chandu v. Mathiledath  
Senkaran.

22nd October, 1940.

L.P.A. No. 35 of 1939.

Malabar Tenancy Act (XIV of 1930), S. 20—Scope and applicability.

A landlord in Malabar cannot maintain a suit for the eviction of a kanomdar except on one or more of the several grounds enumerated in S. 20 of the Malabar Tenancy Act. The language employed in S. 20 is plain and peremptory and its effect is to supersede and nullify all contracts which recognize a right of eviction in the landowner contrary to the terms of the section.

Decision of Patanjali Sastri, J., in (1939) 2 M.L.J. 21 (N.B.C.), affirmed.

P. Govinda Menon for Appellant.

Respondent not represented.

K.S.

The Chief Justice and Krishnaswami  
Ayyangar, J.

Rajamanickam Chetty v.  
Abdul Halim Sahib.

24th October, 1940.

L.P.A. No. 44 of 1939.

Transfer of Property Act (IV of 1932), S. 6 (e)—Suit for damages for wrongful dispossession of premises in breach of lease agreement—Assignment by sale of the "profit and loss of the suit"—Assignees if entitled to continue the suit.

Where after filing a suit for damages for wrongful dispossession of premises in breach of a lease agreement the plaintiff assigned by sale the profit and loss of the suit to X and died thereafter and X claimed to have the right to be brought on record and continue the suit,

Held, the right to recover damages whether for tort or contract is a mere right to sue and according to S. 6 (e) of the Transfer of Property Act cannot be transferred. The assignee of the fruits of a pending action obtains no right to interfere in proceedings in the action.

48 Mad. 280 (P.C.), followed.

N. Srinivasa Aiyangar for Appellant.

G. Padmanabha Aiyangar for Respondent.

K.S.

Abdur Rahman, J.  
25th October, 1940.

Naraparaju Ramamurthy v. Venkata-  
narayana.

S.A. No. 633 of 1940.

*Madras Local Boards Act (XIV of 1920), S. 19 and r. 1—Suit for injunction restraining holding of election—Election held since the filing of the suit—Denial that any election was held—Maintainability of suit in Civil Court.*

In a suit for injunction restraining the holding of an election, the election was alleged by the defendant to have been held subsequent to the suit but the plaintiff contended that the election was not held. It was claimed that the declaration by the Local Government was final in regard to the factum of election and cannot be questioned in a Civil Court.

*Held*, that there is no provision making a declaration by the Local Government under S. 19 to be final in regard to the factum of election and the Civil Court was entitled to entertain the claim and adjudicate on the question whether the election was held or not. If the finding in the suit was that no election was held in fact the suit for declaration can be decreed and an injunction granted.

K. Raja Aiyar and N. Krishnamachari for Appellant.

B. Jagannatha Das for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
4th November, 1940.

Yeddula Chinnabbi and  
three others v. Yeddula  
Venkatasubbamma and  
another.

C.M.A. No. 500 of 1938.

*Madras Agriculturists' Relief Act (IV of 1938), S. 4 (h)—Maintenance allowance under a decree—Whether "property" within the meaning of section.*

The maintenance allowance decreed to a Hindu daughter is "property" within the meaning of S. 4 (h) and therefore she is entitled to the immunity afforded by that provision.

Case-law discussed.

Kasturi Seshagiri Rao for Appellants.

A. Bhujanga Rao and D. E. Krishna Rao for Respondents.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
5th November, 1940.

Ramanathan Chettiar v. Sitaram  
Iyer.

C.M.A. No. 134 of 1940.

*Madras Agriculturists' Relief Act (IV of 1938), S. 8 (ii), Proviso (A)—Partnership—Assessment to income-tax—No assessment of partner individually—Effect.*

Where a partnership and not the individual partner was assessed to income-tax and the question was whether the individual can claim the benefit of the Act,

*Held*, that when the partnership is assessed the individual partner is also assessed within the meaning of the Act.

V. T. Rangaswami Iyengar and K. S. Sankararaman for Appellant.

A. K. Sreeraman for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
6th November, 1940.

Maturi Seshiah v. Lanka Chinna  
Punngaya.

C.M.A. Nos. 27 and 28 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 19—Application by one debtor impleading other debtors as respondents, for setting aside sale in execution and for scaling down decree—Application for withdrawal—Rights of other debtors.*

One of the heirs of a deceased Mahomedan judgment-debtor applied for setting aside the sale in execution and for scaling down the decree

impleading the other heirs as respondents who did not support him. The applicant then applied for withdrawal of his application and the other heirs sought to be transposed as applicants. The application to be transposed was dismissed, but the other heirs were permitted to file a counter-affidavit in the original application and the sale was set aside.

On appeal, *held*, that the application for relief under Act IV of 1938 ensured to the benefit of the other heirs also and the sale could be set aside.

*Held also*, that the Court had a discretion to allow the withdrawal of the application only subject to the rights of the other heirs (respondents). 57 Mad. 892: 66 M.L.J. 517, relied on.

P. Somasundaram and P. Suryanarayana for Appellant.

K. Umamaheswaram and P. Satyanarayana Rao for Respondent.

K.S.

Abdur Rahman, J.  
6th November, 1940.

Ponnappa Pillai v. Bagirathi  
Ammal and others.  
S.A. No. 397 of 1937.

*Will—Bequest with restraint on alienation—Effect.*

When a testator bequeathed all his properties in favour of his adopted son and the material clause in the Will was as follows: ".....I have bequeathed to my son, the schedule mentioned properties worth Rs. 28,116-12-1 to be got by him after my death. The said person shall improve the same without making any alienation and conduct the charities mentioned herein till the end of his lifetime and enjoy the same with hereditary rights" and the Will contained no provision as to who was to enjoy the properties after the death of the donee.

*Held*, that the Will conveyed only a limited estate and the adopted son had no right to settle the properties on anybody.

K. S. Sankara Aiyar and A. K. Sreeramam for Appellant.

K. B. Rangaswami Iyengar and S. Venkatesam for Respondent.

K.S.

Wadsworth and Patanjali Basiri, JJ.  
11th November, 1940.

Nagasundaram Pillai v.  
Mathurbootham Aiyar.  
O.M.A. No. 99 of 1940.

*Madras Agriculturists Relief Act (IV of 1938), Ss. 19 and 20—Application for stay and for scaling down by one judgment-debtor—If all other co-judgment-debtors should join in it.*

There is nothing in S. 19 or S. 20 which compels all co-judgment debtors who have claims as agriculturists to join in an application for stay or for scaling down filed by any other judgment-debtor.

A. V. Narayanaswamy Aiyar for Appellant.

K.V. Sesha Aiyangar for Respondent.

K.S.

The Chief Justice and Krishnaswami  
Ayyangar, J.  
12th November, 1940.

Gourochandra Dyanu Sumanto  
v. Krishnachandra Padhi minor  
by next friend.

L.P.A. No. 64 of 1939.

*Negotiable Instruments Act (XXVI of 1881), S. 87—Promissory note—Alteration of dates of execution of document and indorsement of interest paid—Plaintiff not guilty of any complicity—If S. 87 applicable.*

S. 87 would only apply to cases of fraudulent alteration by a party and to cases where due to negligence by the party it will be possible for a stranger to make the alteration.

(Decision of Abdur Rahman, J., reported in (1939) 2 M.L.J. 686, affirmed).

B. Jagannatha Das for Appellant.

B. V. Ramaswaram for Respondent.

K.S.

Wadsworth, J.  
11th October, 1940.

Lakshmuḍu v. Saramma.  
O.B.P. No. 1519 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 23—Dismissal of application for default—Application for restoration—C. P. Code (V of 1908), O. 9, r. 9 and S. 141—Applicability.*

An application under O. 9, r. 9 read with S. 141 of the Code of Civil Procedure would lie to restore an application under S. 23 of Madras Act IV of 1938, which has been dismissed for default.

A. Lakshmayya for Petitioner.  
B. V. Eamanarasu for Respondent.

K.S.

King, J.  
11th October, 1940.

Kovvuri Subba Rao v. Venkatapuram Panchayat Board.  
O.B.P. No. 482 of 1938.

*Local Authorities Loans Act (I of 1888), S. 4—Panchayat Board taking a loan without sanction of Local Government as required by the rules—Effect on contract—Right of creditor to recover the amount lent under S. 65, Contract Act.*

A loan was contracted by a Panchayat Board without obtaining the sanction of the Local Government required under the rules framed under S. 4 of the Local Authorities Loans Act.

Held, that though the contract of loan was void and no suit to enforce it would lie, the creditor was entitled to the restoration of his money under S. 65 of the Contract Act.

Case-law discussed.

V. Viyanna for Petitioner.  
P. Saiyanarayana Rao for Respondent.

K.S.

Venkataramana Rao, J.  
18th October, 1940.

Chinnaswami v. Mashavaraya Padayachi.  
S. A. No. 855 of 1937.

*Promissory note—Suit by indorsee under a forged indorsement—If maintainable.*

Before an indorsee of a promissory note can get a decree on the strength of the indorsement, he must prove that the indorsement is genuine, if its genuineness was challenged; else he will have no title to sustain his action. Once a document is found to be a forgery brought about to defraud some person of his claim that is enough to vitiate it and no action can be founded thereon.

T. K. Sundararaman for Appellant.  
T. S. Nataraja Pillai for Respondent.

K.S.

Abdur Rahman, J.  
28th October, 1940.

Azoozuddin Sahib v. St. Joseph's College.  
S. A. No. 103 of 1938.

*Madras Survey and Boundaries Act (VIII of 1928), S. 18—Decision of survey authorities registering land in favour of plaintiff, a mosque—If tantamount to putting the mosque in possession.*

The decision of a Survey Officer would not affect the possession of the party against whom it was given. The order registering land in favour of the plaintiffs cannot have the effect of putting the plaintiffs in possession and if the plaintiffs fail to prove that they have been in possession at any time within 12 years of the suit, the suit must fail on the ground of limitation.

T. V. Muthukrishna Aiyar and K.G. Srinivasa Aiyar for Appellant.  
K. V. Saha Aiyangar for Respondent.

K.S.

N R C

Abdur Rahman, J.  
25th October, 1940.

Veerabhadra Pillai v. Narayanaswami Iyer.  
O.B.P. No. 182 of 1939.

*Civil Procedure Code (V of 1908), O. 21, r. 90—Sale of malvaram interest alone—Kudivaramdar, if could apply for setting aside.*

Where only the *malvaram* interest is sold in execution of a decree the *kudivaramdar* will not be a person whose interests have been in any way affected by the sale of the *malvaram* interest and as such he has no *locus standi* to present an application under O. 21, r. 90, C. P. Code.

B. Ramaswamy and T. B. Sundaram for Petitioner.

K. V. Srinivasa Aiyar and T. K. Subramonia Pillai for Respondent.

K.S.

The Chief Justice and  
Krishnaswami Aiyangar, J.  
28th October, 1940.

Raman Chettiar v. Muthupalanappa  
Chettiar.

L.P.A. No. 47 of 1939.

*Provincial Insolvency Act (V of 1920), S 77—Letter of request—Sufficiency to confer jurisdiction on Court acting in aid.*

The District Court of Amherst in Burma adjudicated a person as insolvent and asked the District Court of Ramnad to act in its aid in deciding the question of title to certain immovable properties of the insolvent (situated in the Ramnad District) and left the matter to the decision of the Ramnad Court.

Held, that the Ramnad District Court had full jurisdiction by reason of S. 77 of the Provincial Insolvency Act, to deal with the matter. There is no necessity for any special letter of request from the Amherst Court. Directing a party to file a petition asking for adjudication on a question of title in the District Court of Ramnad is sufficient acknowledgment that the Amherst Court had asked the Ramnad Court to decide all matters relating to that particular property.

T. Nallasivam Pillai for Appellant.

K. Ramanathan Chettiar for Respondent.

K.S.

Pandurang Row and King, JJ.  
29th October, 1940.

Saladi Padmavathi v. Official  
Receiver of West Godavari.  
Appeal No. 331 of 1937.

*Gift—Donor having considerable debts—Validity of gift as against creditors.*

In spite of there being debts amounting to Rs. 40,000 valuable properties of considerable extent were all of them gifted by the debtor to his wife without any reference being made therein as to how his debts were to be paid off. The gift instead of a will looked like having been deliberately executed in order to prevent the creditors from having a claim on the properties of the executant.

Held, the gift deed in question was one in fraud of creditors and void as against the creditors.

P. Chandra Reddi for Appellant.

P. V. Rajamannar and K. Subba Rao for Respondent.

K.S.

Pandurang Row and Abdur Rahman, JJ.  
1st November, 1940.

Raja Mahadeva Royal v.  
Raja Virabasa Chikka Royal  
Appeal No. 6 of 1936.

*Hindu Law—Adoption by widow—Validity—Consent of sapindas—Absence of consent of nearest male sapindas—Consent of co-widow, mother-in-law and remoter male sapindas—If sufficient.*

\* Impartible estate—Renunciation by father in favour of eldest son—Effect on nature of estate in the hands of the son—Settlement deed by

holder of impartible estate providing for maintenance of his brother—Ritual that there was to be no relationship except by blood—Effect on right of survivorship.

*Evidence Act (I of 1872), Ss. 32 and 73—Affidavits in another suit not ante litem motam—Admissibility—Certified copies of letters filed in another suit—When admissible as public documents in evidence.*

A, the senior widow of the holder of an impartible estate, adopted X with the written consent of her mother-in-law, her co-widow, and three other remoter male sapindas. The consent of her husband's paternal uncles B and C was not obtained. As regards B she formally wrote a letter asking for his consent but did not wait to ascertain his views on the propriety of the proposed adoption, and made the adoption before receiving any reply from him. As regards C she did not ask for his consent at all. In a suit by C for the recovery of possession of the zamindari properties on the footing that he was the nearest surviving coparcener,

*Held*, (i) the consent of the co-widow and mother-in-law as female sapindas, in the absence of the consent of the nearest male sapindas was not sufficient to make the adoption valid. Observations in 12 M.I.A. 442 at p. 444, 39 Mad. 772 and 48 Mad. 1 at p. 204, explained. 41 Mad. 998 at 1004, applied.

(ii) The consent of the remoter sapindas will not validate the adoption in the absence of the consent of B and C, the nearer sapindas, without proof that their consent was improperly withheld.

(iii) When the consenting sapindas have been parties along with the widow in setting up a false case as to the existence of oral authority in favour of the widow by her husband, the consent cannot be held to be bona fide given in the spiritual interests of the deceased husband.

(iv) When the zamindar during his life time renounced his rights in favour of his eldest son and later on executed a will stating that he had already renounced his estate and disposing of his other separate property with provision for maintenance to his younger sons from the zamindari property in the hands of the holder, the property in the hands of the eldest son cannot be regarded as his separate property. It was merely an acceleration of succession by renunciation and there is no change in the joint family character of the estate. I.L.B. 1939 Mad. 448 : (1939) 1 M.L.J. 814, distinguished. Such a renunciation need not be in writing. S. 9 of the Transfer of Property Act applied and 24 Mad. 377, distinguished.

(v) Where a Zamindar and his brother entered into a settlement under which the latter was to receive maintenance from out of the income of the zamindari and the settlement recited that thenceforward 'except blood relationship there shall be no relationship as regards properties' the words are not enough to constitute an express renunciation of all the prospective rights of succession by survivorship to the zamindari which is necessary under Hindu law. 10 Mad. 334, 20 Mad. 265, applied. 1 Mad. 812, 5 C.L.B. 499, distinguished. 48 All. 228, 51 Mad. 189, 59 Cal. 1399, 56 All. 468, referred to.

(vi) Affidavits of third parties filed in proceedings in the revenue Courts in Hyderabad relating to the enquiry as to succession to zamindari property in Hyderabad stating that an adoption took place, tendered in evidence under S. 32 (6) of the Evidence Act will be inadmissible in evidence under that provision since they were not ante litem motam but are admissible under sub-S. (7) as relating to a transaction as is mentioned in S. 18 (a). Case-law discussed.

(vii) Copies of letters filed in proceedings in Hyderabad bearing certificates of the Resident that the document is the copy of a public docu-

ment of the Hyderabad State are not public documents within the meaning of S. 74 of the Evidence Act in the absence of proof that the originals of the documents have ever been filed in those proceedings.

*The Advocate-General (Sir A. Krishnaswami Aiyar), V. Radhakrishnayya, B. C. Seshachala Aiyar, K.E. Bajagopalan and P.J. Reddi for Appellant.*

*S. Srinivasa Aiyangar, T.B. Venkatarama Sastri, N.C. Vithalraghavaachariar, A.D. Sitaraman and A.C. Sampath Aiyangar for Respondent.*

K.S.

*Burn, J.*  
6th November, 1940.

*Nagier v. Parvathiammal.*  
S.A. Nos. 924 and 1070 of 1937.

*Civil Procedure Code (V of 1908), S. 16—Suit by Hindu wife for separate maintenance—Prayer that a charge may be created over certain immovable properties of the husband—Suit if can be instituted in the Court within whose jurisdiction the immovable properties were situated.*

Where in a suit against her husband for separate maintenance a Hindu wife prays that a charge may be created over certain immovable properties of the husband the suit may be instituted under S. 16, C. P. Code, in the Court within whose jurisdiction the immovable properties are situate though the cause of action did not arise therein.

42 L.W. 647, followed.

*K. V. Srinivasa Aiyar for Appellant.*  
*V. Meenakshisundaram for Respondent.*

K.S.

*Patanjali Sastri, J.*  
8th November, 1940.

*Chidella Veerayya v. Kallam Kott Reddi, Official Receiver, Guntur.*  
O.B.P. No. 28 of 1938.

*Provincial Insolvency Act (V of 1920), Ss. 5, 37 and 43—Powers of review—O. 47, r. 7, C.P. Code—Appealability of order refusing review—Revesting of properties under S. 37 long after absolute annulment under S. 43—Rights accruing meanwhile.*

After an unconditional order of annulment under S. 43 a creditor applied for review of the order under O. 47, C.P. Code, which was refused. He preferred an appeal under S. 75 (1) to the District Judge who directed the vesting of the properties under S. 37. On revision to the High Court,

*Hold,* (1) that an appeal lies to the District Court under S. 75, Cl. (1) of the Provincial Insolvency Act from every order of the Insolvency Court;

(2) that S. 5 of the Provincial Insolvency Act makes the review provisions applicable to the Insolvency Court;

(3) that an appeal can be preferred by an aggrieved person, and he is not barred from appealing from the order refusing to review. A.I.R. 1935 Pat. 177, dissented from;

(4) that orders of revesting can be made subsequent to the date of annulment. (1938) 1 M.L.J. 824, followed;

(5) but such revesting cannot affect transactions with respect to the property of the insolvent between the date of annulment and the date on which the property is revested in an appointee under S. 37.

*K. Krishnamurthy, for Petitioner.*  
*B.V. Ramaswami for Respondent.*

K.S.

Wadsworth, J.  
8th November, 1940.

Singachala Ramier v. Anantakrishna Aiyar.  
C.B.P. No. 1622 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 9—Mode of working out.*

The proper mode of working out liabilities with reference to S. 9 of Madras Act IV of 1938 is as follows:

- (1) Calculate interest on the debt at 5 per cent. per annum.
- (2) Credit to the amount of interest so calculated the payments actually made or appropriated towards interest.
- (3) Give a decree for any balance of interest thus calculated together with whatever is due for principal—no credit being given towards principal on account of any excess payments towards interest resulting from the scaling down process. C.B.P. No. 486 of 1939, followed.

A payment in full discharge of outstanding interest is a payment towards interest.

Decisions regarding the effect of appropriations under S. 8 are not applicable to a case under S. 9 of the Act.

T. M. Ramaswami Aiyar for Petitioner.  
K. B. Bangaswami Aiyangar for Respondent.  
K.S.

The Chief Justice and Horwill, J.J.  
8th November, 1940.

Mask & Co. v. Vedachala Mudaliar.  
C.M.P. No. 2811 of 1940.

*Court-fees—Court's inherent power to order refund of court-fees—When exercised.*

In an appeal in the High Court reversing the dismissal of a suit by the trial Court on the ground that there was no right of suit, the suit was remanded for trial on the merits. An appeal was preferred to the Privy Council. A stay prayed for by the defendant in the trial Court was opposed by the plaintiffs and was not granted and the suit was decided against the plaintiffs. Thereupon an appeal was preferred to the High Court and was pending when the decision of the Privy Council was announced deciding that there was no right of suit, which meant that the appeal could not be proceeded with. The appellant then applied for an order under the Court's inherent powers for the refund of the court-fees paid on the appeal.

Held, the appellants having opposed the application for stay and insisted that the suit should proceed notwithstanding that the appeal was pending in the Privy Council, there was no reason whatever for the Court to exercise its inherent powers to order refund of court-fees.

K. Bhashyam and T.E. Srinivasan for Petitioner.  
Respondent not represented.

K.S.

The Chief Justice and Krishnaswami Aiyangar, J.  
13th November, 1940.

Ramalingam Chetti v.  
Bandra Goundan.  
C.M.P. No. 4631 of 1940.

*Madras Debt Conciliation Act (XI of 1936), Ss. 10 (1) and 23—Creditor duly filing his statement of claim—Failure of creditor to produce accounts—Absence of creditor at hearing—Board declaring debt discharged—Legality of order—Review under S. 23—Availability of remedy—Effect on right to issue of writ of certiorari.*

After a statement of claim has been filed by a creditor before the Board under S. 10 (1) of the Debt Conciliation Act, the Board has no longer jurisdiction to declare the debt as discharged under S. 10 (2). Where after filing such a statement the Board declares the debt discharged

on the ground of the creditor's absence at the adjourned hearing and failure to produce account books, the order is unlawful and must be quashed by a writ of certiorari. The provision for review under S. 28 of the Act would not be such suitable or other remedy as to disentitle the creditor to the issue of a writ.

D. Ramaswami Aiyangar for Petitioner.

T. G. Baghavachariar and P. Srinivasa Aiyangar for Respondent.

K.S.

Wadsworth, J.  
14th November, 1940.

K. Krishna Menon v. P. Raman  
alias Sankurni Moothan and two others.  
C.B.P. No. 1730 of 1939.

*Madras Agriculturists Relief Act (IV of 1938), S. 15—Tenant mortgaging demised property with possession directing mortgagee to pay michavaram—Mortgagee if entitled to deposit arrears for fasli 1346 and claim the benefits under S. 15 of the Act.*

A tenant's mortgagee with possession of the demised property cannot be deemed to be the tenant liable to pay the rent to the jenni and there is no privity of estate or contract between the mortgagee and the jenni. Where a deposit of a michavaram for 1346 fasli is made merely to safeguard the interest of the mortgagee and not on behalf of the tenant the mortgagee is not entitled to claim the relief under S. 15 of Act IV of 1938.

A. P. Kuttisankara Menon for Petitioner.

C. D. Venkataranga for Respondents.

K.S.

Pandrang Row and King, J.  
18th November, 1940.

S. T. A. L. Alagappa Chettiar v.  
S. T. M. E. Virappa Chettiar and others.  
Appeals Nos. 11 and 12 of 1937.

*Civil Procedure Code (V of 1908), S. 73—Attachment before judgment of judgment-debtor's decree—Attachment ordered before judgment but effected after judgment—Whether an attachment within the meaning of O. 21, r. 53 (3)—Pendency of suit no excuse to a decree-holder from executing his decree—Limitation Act (IX of 1908), Art. 182 (5).*

Where a decree-holder shortly before obtaining a decree had applied for attachment before judgment of another decree which his judgment-debtor had obtained and the attachment though ordered soon after, was effected actually some days after the judgment was passed, and was made absolute some months later, in an application for executing the decree made 5 years after its date and for a share in the rateable distribution of certain assets in deposit in Courts,

*Held*, that though attachment was ordered before judgment still as it was effected after judgment it was permissible to look upon it as an attachment in execution and though that attachment in consequence gave a right to the decree-holder, under O. 21, r. 53 (3), Civil Procedure Code, to execute the attached decree or to share in the realisations therefrom, nevertheless the execution of the decree in regard to any other asset should be deemed to be barred, because no application in execution had been made for 5 years.

*Held also*, that the pendency of a proceeding in regard to an attached property which was intended to make it available for the creditor, was no excuse to the decree-holder for not making his application earlier and the decree-holder's coming on the record of those proceedings and taking an interest in their prosecution could not be looked upon as a step-in-aid of execution so as to save the later application from the bar of limitation.

B. Gopalaswami Aiyangar for Appellant.

B. Kesava Aiyangar for Respondent.

K.O.

Abdur Rahman, J.  
24th October, 1940.

V. K. Govindan Nair v.  
The Maharaja of Cochin.  
S.A. No. 55 of 1938.

*Landlord and tenant—Claim for rent—Landlord if entitled to charge on improvements effected on the land by the sub-tenant.*

A landlord would have no right to ask for a charge as against the improvements effected by his own tenant, much less could he ask for it as against the improvements effected by a sub-tenant.

Case-law considered.

V. Radhakrishnayya and K. P. Ramakrishna Aiyar for Appellant.  
V. Karunakara Menon for Respondent.  
K.S.

Venkataromana Rao, J.  
25th October, 1940.

Krishna Pattar v. Kunhummi Elaya Nayar.  
S.A. No. 528 of 1937.

*Pledge—Deposit of share certificates of company—If creates a valid pledge of such shares.*

As the law stands at present in India, a mere deposit of share certificates would not be enough to create a valid pledge. In order to constitute a valid delivery of the shares, the pledgee must be put in control of the thing pledged so that he may effectively exercise the power of sale.

Case-law (English and Indian) discussed.

O. S. Swammathan for Appellant.  
K. Kuttkrishna Menon for Respondent.  
K.S.

Abdur Rahman, J.  
29th October, 1940.

Subbayan Chettiar v.  
Ponnu-chami Chettiar.  
S.A. No. 225 of 1938.

*Settlement deed—Properties given to wife for her maintenance for life—Death of settlor—Subsequent unchastity—If involves divestiture of life estate—Burden of proof for setting aside settlement.*

The burden of proving that recitals in a settlement deed are not correct and that the deed is invalid for want of consideration, is on the persons who allege that the deed is not binding on them. 55 M.L.J. 788, relied on. By the settlement properties were given by the settlor to his wife 'to live in and enjoy for her maintenance'. It was established that she had become unchaste after the lifetime of her husband and it was contended that the life estate was forfeited by her on account of misconduct.

Held, in the absence of any *dum casta* clause in the settlement deed under which the property had come to vest in the wife for her life, no forfeiture can be found to have been incurred by her on the ground of her subsequent unchastity.

A person who wants an agreement on conveyance to be declared invalid on account of its being opposed to public policy has to prove the grounds which would bring it under S. 28, Indian Contract Act.

B. Sitarama Rao for Appellant.  
K. Narasimha Aiyangar for Respondent.  
K.S.

Abdur Rahman, J.  
5th November, 1940.

Karl Chettiar v. Secretary of State for  
India in Council and others.  
S.A. No. 1035 of 1937.

*Practice—Appeal—Official Receiver in insolvency refusing to appeal—Creditor if entitled to appeal.*

An Official Receiver having failed in a suit to set aside a sale and in the first appeal thereon, a creditor obtained leave of the High Court to appeal in his own name on an *ex parte* application and filed the second appeal. On the question of the *locus standi* of the appellant (creditor) to file the appeal,

*Held*, the Official Receiver is not a representative of the creditors and it is not possible for the creditors to ignore him or act independently of him and file an appeal against a decision which the Official Receiver refuses to appeal against. In a suit on behalf of the estate of the insolvent the Official Receiver appears in his individual capacity and a creditor has no independent right of appeal against the decision.

57 Mad. 670, followed.

The leave to file the appeal granted to the creditor *ex parte* in the High Court cannot prejudice the interests of those against whom the order was passed. The proper course for such a creditor wishing to appeal is to move the Insolvency Court under S. 68 of the Provincial Insolvency Act and to apply for a reversal of the refusal of the Official Receiver to prefer an appeal to the High Court or for a direction to him to appeal or in the alternative ask for permission to appeal in the name of the Official Receiver.

K. S. Champakasa Aiyangar for Appellant.

The Government Pleader (B. Sitarama Rao), K. Rajah Aiyar and B. Rangaswami Aiyangar for Respondents.

K.S.

Abdur Rahman, J.  
5th November, 1940.

Vattappa Kone and another v.  
Muthukaruppan Serval.  
S.A. No. 1071 of 1937.

*Tort—Malicious prosecution—Verbal complaint to village magistrate charging the plaintiff with robbery—If absolutely privileged.*

A verbal complaint was made by the defendant against the plaintiff to a village magistrate charging the plaintiff with the offence of robbery. The village magistrate sent a report on the same day to the police and to the stationary sub-magistrate. The Magistrate ordered an enquiry by the police which subsequently made a report that the complaint was false. The plaintiff was not even summoned. The Magistrate thereupon declined to take any further action and proceedings were dropped. In a suit for damages for malicious prosecution,

*Held*, (i) as the plaintiff was not prosecuted he could not bring an action for damages for malicious prosecution. 37 Mad. 181; 49 Mad. 315 and 24 L.W. 22, relied on.

(ii) The statement or complaint is absolutely privileged. (1940) 2 M. L.J. 556.

(iii) As the occasion was privileged no action for damages for defamation will lie.

T. R. Srinivasan for Appellants.

R. Srinivasa Aiyangar for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
7th November, 1940.

Maruthuvamalai Mooppanar v.  
Avadaiachi.

A.A. No. 205 of 1939.

Civil Procedure Code (K of 1908), O. 21, r. 19—Cross-decrees—Execution—Limitation.

When the decree provides for the recovery of sums by two parties one against the other, it is only the party to whom the larger amount is due who is entitled to execute the decree and limitation cannot run against the person who is entitled to the lesser decree at a time when that decree is not executable having regard to the provisions of O. 21, r. 19.

G. Srinivasa Aiyar for Appellant.

T. G. Raghavachariar for Respondent.

K.S.

Abdus Rahman, J. Syed Ghouse Sahib v. Mohamood Khan Sahib.  
8th November, 1940. S.A. No. 891 of 1935.

Madras Estates Land Act (I of 1908), S. 56—Ryots in possession of joint holding—Patta not tendered to all the ryots—Suit under S. 56 to enforce acceptance of patta—Maintainability.

The right of suit to enforce acceptance of patta arises to a landlord only after the patta has been tendered by him to his ryot and, if the holding is joint, to the several ryots who hold the same jointly (1 Mad. 45 and 13 Mad. 42, relied on). One of the joint pattadars cannot be held to be the agent of the others for tendering patta. The omission to give notice goes to the root of the case. There is no right of suit against a ryot against whom the patta was not served.

O. S. Venkatachariar and D. Ramaswami Aiyangar for Appellant.

B. Paker for Respondent.

K.S.

The Chief Justice and Krishnaswami Aiyangar, J. O.M. Paru Amma v. Keelu Kurup.  
12th November, 1940. L.P.A. No. 68 of 1939.

Transfer of Property Act (IV of 1882), Ss. 76 (h) and 77—Usufructuary mortgage—Mortgagee to utilise the profits towards interest and pay rent to superior landlord—Failure to pay rent—Decree obtained by superior landlord for arrears of rent and eviction—Decree not executed and becoming barred—Redemption by mortgagor—If mortgagee bound to account for arrears of rent not paid.

Plaintiff sued to redeem a usufructuary mortgage of 1894 in which the defendant-mortgagee was allowed to utilise the profits towards the interest due to him but was directed to pay the rent due to the superior landlord the *jenni* every year. The mortgagee failed to pay the rent due to the *jenni* and the *jenni* filed a suit against the mortgagor and the mortgagee for eviction and obtained a decree therefor. The *jenni* failed to execute the decree and the same became barred by limitation. In 1938 the plaintiff sued to redeem the mortgage praying that the defendant should account to him under S. 76 (h) of the Transfer of Property Act for the arrears of rent not paid by him to the *jenni* which he was bound to pay out of the profits of the property.

Held, that the mortgagee was not bound to account as there was a contract to the contrary within the meaning of S. 77, Transfer of Property Act and the decision in 57 M.L.J. 800 will not apply to this case.

K. P. Ramakrishna Aiyar for Appellant.

P. Govinda Menon, C. S. Krishnaswami Aiyar, C. M. Balakrishnan and F.P.K. Nambiar for Respondent.

K.S.

*The Chief Justice and Krishnaswami Aiyangar, J.* Palanappa Chettiar v. K. Periasami Konar.  
14th November, 1940. L.P.A. No. 78 of 1939.

*Mortgage—Covenant to redeem after paying mortgagee's money—If personal covenant to pay—Suit for money—If sustainable.*

A deed of mortgage stated as follows: "In any year after giving you notice in Panguni, and after paying your money in Chitrai I shall redeem the properties". On a question whether there was an unconditional undertaking to pay,

*Hold*, that there was no enforceable covenant to pay and the suit for money was unsustainable.

Decision of Wadsworth, J., in S.A. No. 640 of 1935, affirmed.  
A.C. Sampath Aiyangar and T. K. Sundarabalan for Appellant.  
T. E. Ramabhadrachariar for Respondent.  
K.S.

Burn and Mookett, JJ. Public Prosecutor v. Venkatasubramanyam.  
18th November, 1940. Ori. B.C. No. 799 of 1940.  
(Ori. B.P. No. 753 of 1940)

*Madras Children Act (IV of 1920), Ss. 3 and 22—Conviction for murder—Accused under 18 years at date of offence and over 18 at time of conviction—Proper sentence.*

Where an accused who was convicted for murder though under 18 years of age at the time of the offence was over 18 years at the time of trial of the case, he cannot be called a "young person", and S. 22 of Act IV of 1920 did not impose any bar against sentencing him to death or transportation. It is the time of the conviction and not the time of the commission of the offence that is important.

Youth alone is not a reason for mitigating punishment but as the offender was below 18 years, a sentence of transportation for life was proper.

The Public Prosecutor in person.  
O.K. Venkatanarasimham for Accused.  
K.S.

Wadsworth, J. Muthuswami Chettiar v. Narayanaswami Chettiar.  
18th November, 1940. O.B.P. No. 1001 of 1937.

*Civil Procedure Code (V of 1908), O. 1, r. 10 and O. 84, r. 1—Suit on mortgage by adopted son of deceased mortgagee—Person recognised by a compromise as entitled to half of the mortgagee's property in a prior suit challenging adoption—Right to be added as party in mortgage suit.*

The property of a deceased mortgagee was claimed by an alleged adopted son and X another claimant challenged the adoption in a suit. By a compromise in the suit the adopted son and X were recognised as entitled to a half-share each in the properties of the deceased mortgagee. In a suit on the mortgage by the adopted son X claiming that he was entitled to half of the mortgage amount applied under O. 1, r. 10, C. P. Code, to be impleaded as a party.

*Hold*, although the claim of X is adverse to the plaintiff it is one which ought to be decided before a decree was given in the mortgage suit. Otherwise the mortgagor would be liable to another suit on the same mortgage and the decree in the plaintiff's suit would not enable the mortgagor to satisfy the claim under the mortgage by payment of the amount due to the plaintiff. O. 84, r. 1 requires that all persons having an interest in

the mortgage security shall be joined as parties to any suit relating to the mortgage. Accordingly X is entitled to be added as a necessary party to the suit.

*N. Muthuswami Aiyar* and *S. Srinivasan* for Petitioner.

*M. L. Noyak* and *T. K. Rajagopalan* for Respondent.

K.S.

*The Chief Justice and Krishnaswami Aiyangar, J.* *P. Venkatasubbiah Chetty and others v. Jamuna Mosque by trustees.*

20th November, 1940.

L.P.A. No. 33 of 1939.

*Evidence Act (I of 1872), S. 32 (8)*—Statement of mortgagor embodied in a compromise in a suit against him—Admissibility in suit for redemption.

Three usufructuary mortgages dated 1850, 1860 and 1864, were assigned in 1878 to the predecessor of the appellants. The respondents who claimed to redeem them were the trustees of a mosque. The only evidence of the title of the trustees was a compromise embodied in a decree against the mortgagor and in favour of some Muhammadans representing the mosque in 1875.

*Held*, that the statement of the mortgagor in the compromise was admissible under S. 32 (3) of the Evidence Act.

*Held also*, that Art. 134 barred the redemption of item I in suit though the said item was mortgaged by way of conditional sale in 1875 as the later transfer deed purported to be of an absolute interest and not of a mortgagee's interest. 1 Mad. 1, referred to.

*K. Bashyam Aiyangar, M.S. Venkatarama Aiyar* and *V. Ganapathi Ayyah* for Appellants.

*K.V. Krishnasami Aiyar* and *T. E. Ramabhadrachariar* for Respondent.

K.S.

*Wadsworth, J.*

21st November, 1940.

*Ramaswami v. Venkataraddi.*

O.B.P. No. 1012 of 1938.

*Madras Agriculturists' Relief Act (IV of 1938), S. 4, Cl. (A)*—Promissory note in favour of woman endorsed for collection only after 1st October, 1937—If exempt from scaling down provisions.

A promissory note dated 4-8-1935 (in renewal of earlier ones) executed in favour of a woman was endorsed to the plaintiff for collection only, on 25-2-1938. In a suit on the promissory note in an application for scaling down the debt,

*Held*, the endorsement being for collection only, made on 25-2-1938 the debt was one due to a woman on 1st October, 1937, under S. 4, Cl. (A) of Act IV of 1938 and cannot be scaled down.

*K. Krishnamurthy* for Petitioner.

*K. Bhimasankaram* for Respondent.

K.S.

*Patanjali Sastri, J.*

22nd November, 1940.

*Sambamurthi Gurukkal and others v.*

*Shanmugam Pillai and others.*

S.A. No. 12 of 1938.

*Madras Hindu Religious Endowments Act (II of 1927), S. 48 (1)*—Power of trustees to prescribe fees to be paid by worshippers to archakas.

The trustees of a temple prescribed the fees to be paid by the worshippers to the archakas for performing 'sastharam'. In a suit by the archakas to restrain interference with their *samool* rights,

*Hold*, the trustees had disciplinary control over the archakas and the trustees were within their powers to regulate and control the affairs of the temple.

K. V. Sesha Aiyangar and R. Venkatachari for Appellants.

K. Bhashyam and K. Srinivasan for Respondents.

K.S.

Patanjali Sastri, J.  
22nd November, 1940.

The Municipal Council, Dindigul v.  
Syed Ismail Saheb.  
S.A. No. 13 of 1938.

*Madras District Municipalities Act (V of 1920), S. 269—"Trade of butcher"—Meaning.*

Mullas appointed by the kazi to administer the first cut after invoking the name of the prophet in slaughtering animals brought to the slaughter house were persons liable to take out licences as provided in S. 269 of the District Municipalities Act. The expression "trade of a butcher" includes the killer of the animals for the market as well as the seller of the meat for human consumption.

K. Rajah Aiyar and V. Seshadri for Appellant.

S. Panchapagesa Sastri and K. R. Krishnaswami Aiyar for Respondent.

K. S.

The Chief Justice and Hoppell, J.  
25th November, 1940.

Narayanaswami Aiyar (Special Receiver) v. Soudappa Goundar.

L.P.A. No. 9 of 1940.

*Res judicata—Suit filed by mortgagee—Adjudication of mortgagor as insolvent—Application by special receiver in insolvency for setting aside mortgage as without consideration—Suit and application heard together—Suit decreed and application dismissed—Appeal only from order dismissing application—If barred by decree in suit.*

After a suit was filed by a mortgagee the mortgagor was adjudged insolvent and the special receiver applied for setting aside the mortgage as one without consideration under Ss. 4 and 58 of the Provincial Insolvency Act. The suit and application were heard together and the suit was decreed and the application dismissed. An appeal was filed from the order dismissing the application, no appeal having been preferred against the decree in the mortgage suit.

*Hold*, as the application and suit were heard and disposed of at the same time and an appeal was filed from the order on the application, the mortgage decree did not become final and conclusive to operate as *res judicata* in the appeal. 29 Mad. 338 (F.B.), followed.

K. Bhashyam, C.V. Subramania Aiyar and T.B. Srinivasan for Appellant.

K. V. Krishnaswami Aiyar and M. Krishna Bharati for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
4th November, 1940.

Vinayaka Rao Sahib Bhonsle v.  
The Junior Prince's Estate by  
Official Receiver, West Tanjore.

A.A.O. No. 441 of 1938.  
(converted into C.B.P. No. 1859 of 1940).

*Madras Agriculturists' Relief Act (IV of 1938), S. 21—Insolvency of father—No bar to son's right to apply under the Act for scaling down.*

The insolvency of a father does not prevent the son from applying for the benefits of Act IV of 1938 by reason of S. 21. (1940) 2 M.L.J. 291, approved.

S. V. Venugopalachari for Appellant.  
K. S. Desikan for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
5th November, 1940.

Vastreddi Pitchayya v.  
Levu Subbayya.

A.A.O. No. 86 of 1939  
(converted into C.B.P. No. 1865 of 1940).

*Madras Agriculturists' Relief Act (IV of 1938), Ss. 19 and 20—Debt due by members of a partnership firm—Agriculturist member—Right to have debt scaled down.*

A debt incurred by a partnership is really a debt incurred by the partners for which each of them is liable and where a partner so liable is an agriculturist, he is entitled to apply under Ss. 19 and 20.

K. Kotayya for Appellant.  
Ch. Raghava Rao for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
5th November, 1940.

Ramaswami Gounder and another v.  
T.S.P.L.S. Thimmappa Chettiar  
and others.

A.A.O. No. 136 of 1940.

*Madras Agriculturists' Relief Act (IV of 1938), Ss. 23 and 19—Application under—If applicant must show that he has applied under S. 19 of the Act.*

An applicant under S. 23 of Act IV of 1938 must show that he is an agriculturist entitled to the benefits of the Act, but he need not show that he has already applied to the Court for those benefits. It is not essential that the applicant should have actually instituted proceedings under S. 19.

T. V. Ramamatha Aiyar for Appellant.  
K. B. Rangaswami Aiyangar and E. Gopalaswami Aiyangar for Respondent.

K.S.

Wadsworth and Patanjali Sastri, JJ.  
5th November, 1940.

Ramanathan Chettiar v.  
Seetharama Aiyar.  
A.A.O. No. 134 of 1940.

*Madras Agriculturists' Relief Act (IV of 1938), S. 3—Firm of money-lenders—If an "Agriculturist".*

It is clear with reference to the definitions in S. 3 of Madras Act IV of 1938 that a firm of money-lenders cannot be an agriculturist.

V.T. Rangaswami Aiyangar and K. S. Sankararaman for Appellant.  
A. K. Srinaman for Respondent.

K.S.

N R C

*The Chief Justice and Krishnaswami  
Aiyangar, J.*  
12th November, 1940.

Ramaswami Aiyar (Receiver) v.  
Veerarayan Raja and another.  
L.P.A. No. 71 of 1938.

*Practice—Presentation of plaint to Court of Subordinate Judge—Return for presentation to Court of lower pecuniary jurisdiction—Suit if can be deemed to be instituted on the date of presentation to Subordinate Judge's Court.*

Where a plaint is presented to a Court having jurisdiction and that Court accepts the plaint as being in order it must be held that the suit has been instituted. Because at some later stage, as the result of a finding of fact on the question of the value of the subject-matter of the suit it is found that the plaint should have been presented to another Court having jurisdiction and that the plaint has been returned for presentation in that Court it does not mean that the suit has not been instituted. When a plaint has been presented to a Court having jurisdiction a transfer of the case to another forum cannot mean the cancellation of the institution of the suit.

Decision of King, J., affirmed. 52 Bom. 548, distinguished.

P. Govinda Menon for Appellants.

Respondent not represented.

K.S.

*Patanjali Sastri, J.*  
12th November, 1940.

Tiyyagura Chellamayya  
v. Bommu Pulla Reddi.  
S.A. No. 150 of 1938.

*Hindu Law—Adoption—Consent of sapindas—Validity.*

The sapindas executed a document in favour of a childless widow in the following terms:—

“We hereby authorize you that during your life you may bring a young boy and adopt him. We have therefore executed this deed of our permission so that you may bring any boy you like and adopt him”.

An adoption was made within a short time after the execution of the document.

Held, that the adoption based on such authority was valid in the circumstances. 1914 M.W.N. 620, followed; 26 Mad. 681; 1914 M.W.N. 502 and A.L.B. 1925 Mad. 67, distinguished.

K. Kottayya for Appellant.

P. Satyanarayana Rao for Respondent.

K.S.

*Patanjali Sastri, J.*  
12th November, 1940.

Parvatesam v. Krishnachandra Gajapathi.  
S.A. No. 1197 of 1937.

*Survey and Boundaries Act—Dispute as to correctness of survey demarcation of 1910-1912—Whether provisions of 1897 Act or 1923 Act applicable.*

Where the survey the correctness of which is in dispute had taken place during 1910-1912 the question whether it is binding on the parties has to be determined with reference to the provisions of the Act of 1897 which was then in force.

V. Govindarajachari for Appellants.

P. V. Rajamannar and K. Subba Rao for Respondent.

K.S.

*The Chief Justice and Krishnaswami  
Ayyangar, J.*  
18th November, 1940.

*Arunachalam Chettiar v.  
Ramannjachariar.*  
Ori.M.P. No. 1160 of 1940.

*Contempt—Failure of special receiver to comply with order of District Court to deposit moneys of insolvent estates in his hands into Court—Application to commit for contempt—Propriety.*

S. 2 (8) of the Contempt of Courts Act provides that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code. Accordingly where an application to commit for contempt was preferred against a special receiver for failure to comply with the order of the District Judge to pay into Court certain moneys in his hands belonging to insolvent estates,

*Held*, that the application was an abuse of process of Court and must be dismissed and the petitioner should pay the respondent his costs, Rs. 150.

*K. Sankara Sastri* for Petitioner.

*S. S. Ramachandra Aiyar* for Respondent.

K.S.

*The Chief Justice and Krishnaswami  
Ayyangar, J.*  
14th November, 1940.

*Suryanarayanamurthy v.  
Venkamma and another.*  
I.P.A. No. 74 of 1939.

*Will found to be invalid—If can be given effect to as family settlement.*

Where a father and son are the only coparceners and a will by the father is attested by the son and his consent to the dispositions in the will is proved, though the will itself is found to be invalid it can be given effect to as a family settlement.

48 All. 818, followed.

Decision of Patanjali Sastri, J., affirmed.

*Ch. Baghava Rao* for Appellant.

*V. Govindaraja Chari and V. V. Sastri* for Respondent.

K.S.

*Somayya, J.*  
14th November, 1940.

*Muthuswami Naidu v. Sonaimuthu  
Servali and another.*  
C.B.P. No. 950 of 1938.

*Promissory note—Consideration, withdrawal of prosecution against a third person by the plaintiff—Inability to withdraw prosecution as Court refused to permit the case to be compounded—Enforceability of promissory note.*

The consideration for a promissory note was the withdrawal of the prosecution against a third person by the plaintiff. The Court did not permit the criminal case to be compounded and the prosecution ended in a conviction. In a suit to enforce payment under the promissory note,

*Held*, that the consideration for the promissory note had failed and the suit must be dismissed.

*T. S. Vaidyanatha Aiyar* for Petitioner.

*N. Somasundaram* for Respondent.

K.S.

*Mookett, J.* Chidambaram Pillai v. Sivasubramania Gomathi.  
15th November, 1940. O.E.P. No. 983 of 1938.

*Order Procedure Code (V of 1908), O. 47, r. 1—Review—“Other sufficient reasons”—Meaning—Omission of Judge to consider a decision—If ground for review.*

The successor of a Subordinate Judge reviewed his predecessor's order on the ground that his predecessor's attention had not been drawn to a decision of the Judicial Committee, which he considered rendered his predecessor's judgment wrong. On revision,

*Held*, powers of review are confined to those set out in O. 47, r. 1, O.P. Code. The expression “other sufficient reasons” in O. 47, r. 1, means reasons analogous to the specific reasons set out in the rule. The omission to consider a decision however regrettable, however wrong cannot constitute an error apparent on the face of the record and cannot constitute a ground for review.

*K. V. Saha Aiyangar, N. S. Mani and T. Nallasivan Pillai* for Petitioner.

*K. Kuttukrishna Menon* for Respondent.

K.S.

*Wadsworth, J.* Maharaja of Pithapuram v.  
19th November, 1940. Mangamma and others.  
O.E.P. No 1209 of 1939.

*Madras Estates Land Act (I of 1908), Ss. 124 and 168-A—Purchase by landlord under sale for arrears of rent—Claim for mesne profits till delivery—If cognisable in Civil Court.*

S. 168-A of the Madras Estates Land Act is not intended to provide a machinery for collecting mesne profits from unauthorised occupants except as incidental to their eviction by suit. When a landlord has purchased the properties at a revenue sale but refrained from taking proceedings under S. 124 of the Act for taking delivery it is reasonable to draw the inference that he is prepared to accept the rent and damages which can be claimed under S. 168 from the actual occupant during the interval between the sale and delivery. After possession is surrendered he cannot bring a suit for mesne profits in the ordinary Civil Courts and the landlord is confined to the special remedy provided by the Act.

*Ch. Baghava Rao* for Petitioner.

*K. Bhimasankaram* for Respondent.

K.S.

*The Chief Justice and Happell, J.* Ganta Bangarigadeo v. Paltimo  
21st November, 1940. Atchutharamayya.  
I.P.A. No. 6 of 1940.

*Madras Estates Land Act (I of 1908)—Patta for one year if requires registration—S. 52 (B)—Patta if remains in force after one year—Suit for possession by such tenant against trespassers after one year—Landlord's acquiescence in suit—Suit if maintainable—Landlord added as a defendant only in second appeal more than twelve years after the date of trespass—S. 22, Limitation Act—If applicable.*

Where a landholder granted a patta to a person for one year and the land being in the possession of trespassers on the date of the lease the tenant instituted a suit in ejectment against the trespassers only after the expiry of the one year covered by the lease without making the landholder a party and the landholder on being added as party defendant in second

appeal more than twelve years from the date of the trespass signified his assent to the tenant getting possession,

*Held*, (i) that the patta being a lease for one year in the particular case did not require registration and that it continued in force until a new patta and muchilka were exchanged, by virtue of S. 52 (8) of the Madras Estates Land Act and that the tenant can maintain a suit in ejectment against trespassers;

(ii) that as the landholder had signified his assent to the tenant's getting possession the case fell directly within the ruling in 87 Mad. 281;

(iii) that S. 22 of the Limitation Act has no application to a case where a party is added as a defendant against whom no relief is claimed as it does not alter the nature of the suit.

V. *Subramonyam* and B.V. *Subramanyam* for Appellant.

P. *Satyamurthy Rao* for P. *Somasundaram* and S. *Ramanurthi* for Respondents.

K.S.

*Wadsworth, J.*  
21st November, 1940.

*Venkatapayya Rao v. Rama Rao.*  
O.B.P. No. 971 of 1938.

*Madras Agriculturists' Relief Act (IV of 1938), S. 20—Stay of execution under—Power of Court to direct its officer to sell perishable property in its custody to prevent its deterioration.*

Where there has been a stay of execution under S. 20 of Act IV of 1938 the Court can still direct its officer under O. 21, r. 43 of the Code to sell perishable property which is in the custody of the Court to prevent its deterioration. That is not an act in execution of the decree but an act in pursuance of the Court's responsibility for the safe custody of property held by it as a result of execution. The stay will not operate to prevent such a necessary action by the Court.

V. S. *Narasimhaiah* for Petitioner.

P. *Somasundaram* for Respondent.

K.S.

*Mookett, J.*  
22nd November, 1940.

*Sati Balakrishna Lal Janki Prasad v. Mangala Sengiah.*  
O.B.P. No. 664 of 1938.

*Partnership Act (IX of 1932), S. 69—Sati by partners of dissolved unregistered firm against clerk for recovery of moneys misappropriated—Maintainability.*

The member of a partnership could after dissolution, sue to recover a debt incurred before the dissolution as being a debt for which they were enabled to sue because it was expressly provided in S. 69, sub-S. (8) (a). I.L.B. (1938) Bom. 102, followed.

Where the suit is by a member of a dissolved unregistered partnership against a clerk for recovery of moneys misappropriated, the suit is not on contract but in tort. S. 69 of the Partnership Act relates only to right arising from a contract and it is not the intention of S. 69 to prevent unregistered firms recovering property from wrongdoers.

P.V. *Subramanyam* for Petitioner.

K. *Krishnamurthi* for Respondent.

K.S.

[F. B.]

The Chief Justice, Krishnaswami  
Aiyangar and Happa, JJ.  
25th November, 1940.

In the matter of  
an Advocate.  
Referred Case No. 28 of 1940.

*Legal Practitioner—Addressing a letter to a clerk in a Magistrate's Office asking that an application filed by him should be dealt with urgently—Propriety.*

It is improper for an advocate to address a letter to a clerk in a Magistrate's Office asking that an application filed by him should be dealt with urgently. The proper course for a legal practitioner, if there was any delay, is to bring the matter to the notice of the presiding officer of the Court.

The Advocate-General (Sir A. Krishnaswami Aiyar) in support of the reference.

S. Krishnamurthi for Respondent Advocate.

K.S.

Krishnaswami Aiyangar, J.  
26th November, 1940.

Stock and Share Exchange Bureau,  
Rawalpindi v. Kothari & Sons.  
O.B.P. No. 837 of 1938.

*Limitation Act (IX of 1908), Art. 164—Application for setting aside ex parte decree—Starting point for limitation—'Knowledge of decree'—If means of knowledge equivalent to—Practice—Summons—'Duly served'—Meaning of within C.P. Code (V of 1908), O. 9, r. 18.*

Where the summons is served on a defendant too late to afford him sufficient opportunity of appearing at the hearing of the suit, it is not a case of a summons "duly served" within the meaning of O. 9, r. 18, C. P. Code. In such cases the Court ought to issue fresh summons. An omission on the part of such a defendant to prosecute inquiry which might have led to a knowledge of the date of hearing cannot be regarded as culpable or wilful so as to carry with it the consequence of "knowledge". Such a defendant will be within time if he applies for setting aside the ex parte decree within 80 days of actual knowledge of the decree.

S. Govind Swaminathan for Petitioner.

John and Bow for Respondents.

K.S.

Burn, J.  
28th November, 1940.

Sait Lalchand Kushalchand Firm v.  
Ramakoteswara Rao and others.  
O.B.P. No. 8 of 1938.

*Civil Procedure Code (V of 1908), S. 78—Amount realised by sale in execution of debtor's property, paid over to the Official Assignee under S. 53 of Presidency Towns Insolvency Act—Repayment to executing Court on annulment of adjudication—Person applying, if entitled to rateable distribution.*

Amounts realised in execution after the presentation of a petition by the judgment-debtor for adjudication as an insolvent is not a realisation on account of the judgment-debtor, but belongs to the Official Assignee by virtue of S. 53 of the Presidency Towns Insolvency Act. Where after the annulment of adjudication the Official Assignee returns to the executing Court the amount of the realisations received by him from the executing Court on the adjudication, the amount is held by the executing Court for

the first time so as to be capable of distribution among the rival decree-holders as on that date.

*V. Govindarajachari and Kastur Seshagiri Rao* for Petitioner.

*C. Vasudevan* for Respondents.

K.S.

*King and Patanjali Sastri, JJ.*  
29th November, 1940.

*Gadamsetti Pedda Subbarayudu and others v. Langan Yalla Somayya*, being minor (by next friend Kotirika Ramakrishnayya) and two others.

Appeal No. 7 of 1939.

*Madras Agriculturists' Relief Act (IV of 1938), S. 21—Insolvency of mortgagor and declaration of dividend in the insolvency—Purchasers of equity of redemption—Right to have mortgage decree scaled down.*

Where a mortgagor has been adjudged insolvent and a dividend has been declared in the insolvency, the purchasers of the equity of redemption who are agriculturists are entitled to have the mortgage decree scaled down under Act IV of 1938.

Decision of Wadsworth, J., in *Sooryanarayana v. Ramamma*, (1939) 2 M.L.J. 291, approved.

*K. S. Jayaram* for Appellant.

*V. Govindarajachari* for Respondents.

K.S.

*Lakshmana Rao, J.*  
29th November, 1940.

*President, Pakkam Panchayat Board v. Muniswami Reddy.*

Orl.R.O. No. 635 of 1940 and

Orl.R.P. No. 598 of 1940.

*Madras Local Boards Act (XIV of 1920), S. 207—Accused found guilty of offence under S. 207—If can be acquitted on the ground that the result of his objection petition was not communicated to him.*

Where an accused is found guilty of the offence under S. 207 of the Madras Local Boards Act, the fact that the result of his objection petition was not communicated to him is not a ground for acquitting him.

*V. Ramaswami Aiyar* for Petitioner.

*The Public Prosecutor (V. L. Ezhiraj)* for the Crown.

Accused (Respondent) not represented.

K.S.

*Lakshmana Rao, J.*  
29th November, 1940.

*Periannan Chettiar*, Petitioner  
(Accused).

Orl.R.O. No. 1005 of 1940 and

Orl.R.P. No. 957 of 1940.

*Companies Act (VII of 1913), S. 78 (2)—Default under—Ordinary director not knowingly and wilfully party to—If can be convicted for default.*

Where an ordinary director living outside Madras was not knowingly and wilfully a party to the default under S. 78 (2) of the Indian Companies Act, it is not proper to convict him for that default.

*G. N. Chary* for Petitioner.

*Crown Prosecutor* for the Crown.

K.S.

*Lakshmana Rao, J.*  
29th November, 1940.

Periannan Chettiar, Petitioner  
(Accused).  
Crl.B.O. No. 1011 of 1940 and  
Crl.B.P. No. 962 of 1940.

*Companies Act (VII of 1913), S. 188 (8)—Ordinary director not knowingly and wilfully party to default under S. 188 (8)—Conviction—Propriety.*

Where an ordinary director of a company is not shown to have knowingly or wilfully been a party to a default under S. 188 (8) of the Companies Act he should not be convicted.

*G. N. Chary* for Petitioner.

*Crown Prosecutor* for the Crown.

K.S.

*Lakshmana Rao, J.*  
4th December, 1940.

*Kunhiraman Nair, In re.*  
Cr. Appeal No. 716 of 1940.

*Indian Post Office Act (VI of 1898), Ss. 52 and 58—Offence under S. 52—Sanction of postal authorities—If essential to confer jurisdiction on Court.*

A postman was charged with secreting postal articles, namely letters written to a lady by her lover. On a preliminary objection as to jurisdiction,

*Hold*, that though for a prosecution under S. 58 of the Post Office Act the sanction of the Director-General of Posts and Telegraphs or the Post Master-General was necessary an offence under S. 52 of the Act with which the accused was originally charged did not require any such sanction and the Court had jurisdiction to try the case.

*N. Somasundaram* for the Crown.

*K. S. Sundaram* for Accused.

K.S.

[END OF VOLUME 1940—II.]