

1878.
April 15.

at Madras, and until such breach occurred, the plaintiff had no cause of action.

MUHAMMAD
ABDUL
KADAR
v.
THE EAST
INDIAN
RAILWAY
COMPANY.

Our attention was drawn to the controversy in the English cases terminating in *Vaughan v. Weldon* (1), in which all the judges agreed upon the construction of the 18th Section of the C. L. Pro. Act, 1852, that it was sufficient if the breach of contract arose within the jurisdiction. The words in that section are "a cause of action which arose within the jurisdiction, or a breach of a contract made within the jurisdiction." But I think we shall be safe in following this and the Bengal decision (2), and in holding that, the breach of contract having arisen at Madras, the cause of action has wholly arisen within this jurisdiction.

Appeal allowed.

Attorneys for the plaintiffs Messrs. *Branson and Branson.*

Attorneys for the defendants Messrs. *Barclay and Morgan.*

APPELLATE CIVIL.

Before Sir W. Morgan, C.J., and Mr. Justice Kindersley.

1878.
January 19.

NARASÁYYA CHETTI (3RD DEFENDANT) APPELLANT v. GURU-
VAPPA CHETTI (PLAINTIFF) RESPONDENT (3).

Registration—Act VIII of 1871.

The words in Section 17 of the Registration Act (VIII of 1871) "present or future," "vested or contingent," point, not to the value, or its ascertainment, but to the right or interest in the land which is to be created as a security. If the charge or interest created is of a value less than Rupees 100, registration is needless.

THE suit was brought for the recovery of Rupees 344-12-0 due on a mortgage bond. The plaintiff alleged that one Timma Reddi (deceased) and the second defendant executed to him on 3rd May 1873 a bond for Rupees 95, mortgaging nanjah lands, etc., and agreeing to pay Rupees 60 worth of paddy and ragi and Rupees 35 in cash within December 1873, in default to pay an increased quantity of grain and interest on the cash at the rate

(1) L.R., 10 C.P., 47.

(2) 13 Ben. L.R., 461.

(3) Second Appeal No. 637 of 1877, against the decree of C. G. Plumer, District Judge of North Arcot, dated 30th July 1877, confirming the decree of the District Munsif of Tirupatti, dated 2nd March 1877.

of 2½ per cent. per month; that they had failed to discharge the debt on the expiration of the time fixed; that the property of the deceased Timma Reddi was in the possession of the first and second defendants; and that the third defendant had in his possession a portion of the mortgaged property. The second defendant denied the execution by himself and his elder brother (deceased) of the document sued on, and stated that he had sold the land to the third defendant. The third defendant also denied the genuineness of the document in dispute, pleaded a sale of the property to himself by second defendant on 17th August 1876, and alleged that the plaintiff's document, even if genuine, was invalid, not having been registered.

The District Munsif decreed in favor of plaintiff.

The third defendant appealed on the ground, among others, that the bond in suit not having been registered, was not receivable in evidence. Upon this ground of appeal the District Judge, confirming the decree of the Munsif, made the following remarks:—

“This objection also, in my opinion, fails. The bond sued on was a document the registration of which was not compulsory. It is true that in consequence of the amount due under the bond (Rupees 95) not having been paid within the time specified in the bond, interest accrued and has accumulated so as to make the amount now due to exceed Rupees 100; but at the time the bond was executed the right of mortgage created did not exceed Rupees 100, and if the amount due had been paid within the time specified, the sum so paid would not have exceeded Rupees 95, and the bond did not necessarily create a right in immoveable property of the value of Rupees 100.”

“This case can be distinguished from *Darshan Singh v. Hanwantu* (1), for in that case the lowest sum that could have been recovered under the bond was Rupees 105, viz., Rupees 99 principal and Rupees 6 interest.”

The third defendant preferred a second appeal on the ground, among others, that the plaintiff's document, not having been registered, was inadmissible in evidence.

T. Rama Rau for the Appellant.

Gurumurthi A'yyar for the Respondent.

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NARASÁYYA
CHETTI
v.
GURUVAPPA
CHETTI.

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NARASAYYA
CHETTI
v.
GURUVAPPA
CHETTI.

The Court delivered the following Judgments :—

MORGAN, C.J.—It is not too much to say of laws like the Registration and Stamp Laws that, unless some simple and definite rule explains in what cases documents must be registered and stamped, the greatest confusion and hardship may arise.

In the case of the *stamp* laws both in England and here it is settled that it is the *sum itself* and not interest, accretions, and so forth, “that must guide the sum actually due at the time of taking the security, and not any sum to become due in future for the use of the money.” *Pruessing v. Ing* (1).

This is the convenient rule, and the language of the Stamp Acts makes it clear.

The Registration Act may by its terms cause more difficulty. The words “*present or future*,” “*vested or contingent*,” to my mind, point, not to the *value* or its ascertainment, but to the right or interest in the land which is to be created as a security. The security may be one that will arise in future. The person giving it may have in the land no present vested right. If the charge or interest created is of a value less than 100 Rupees, registration is needless.

No doubt in many cases, as in this case, the land cannot be freed and restored to the proprietor until various increments and the principal sums are paid; but for registration purposes a future contingent value is useless. The act of registering must be done at once, but it is impossible beforehand to say what charge may ultimately have to be borne. The value of the present interest should determine.

We might perhaps distinguish the decisions, but if possible it is more convenient in such a matter to have a broad rule.

KINDERSLEY, J.—I agree with the Chief Justice. In the case of *Subramania Pillai v. Kunji Kone* (2), the sum of 99 Rupees was made payable one year after date, with interest, which would raise the total sum payable at the time appointed to more than 100 Rupees. In the present case the value secured payable at the periods appointed does not amount to 100 Rupees, but in default of payment a fine in grain and interest become payable

(1) 4 B. and Ald., 204.

(2) S. A. No. 432 of 1877, not reported.

at certain rates. The amount of such fine would depend on the amount of the crop and it was impossible at the time of execution to say how much, if anything, would become due on this account or on account of interest, I therefore agree that those uncertain amounts ought not to be considered in calculating for the purposes of the Registration Act the amount secured by the instrument.

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NARASÁYYA
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v.
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CHETTI.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir W. Morgan, C.J., and Mr. Justice Innes.

CHANDU AND ANOTHER (DEFENDANTS) SPECIAL APPELLANTS v.
CHATHU NAMBIAR (PLAINTIFF) SPECIAL RESPONDENT (1).

1878.
March 8.

Karnavan—Declaratory decree, suit for—Lands acquired by member of Malabar tárwád—Malabar Law.

Suit to obtain a declaration that the lands mentioned in the plaint formed the common property of the tárwád of which the plaintiff was karnavan and to have the revenue register of those lands transferred to the plaintiff's name. The plaint alleged that the lands in question were the private acquisitions of three of the deceased members of the tárwád, of whom the last, in whose name the lands were last assessed, on becoming karnavan of the tárwád, applied to the Sub-Collector to have the registry of those lands transferred to the names of his own nephews, the first and second defendants; that plaintiff protested and was referred to a Civil Suit to obtain a declaration that the registry could not be so transferred. *Held*, on Special Appeal, affirming the decree of the Lower Appellate Court, that the plaintiff was entitled to the declaration sued for, as it would enable him to go to the Collector for substantial relief in the shape of the transfer of registry to his name, but that the relief sought for could not be granted by the Court as the Revenue authority was not a party to the suit.

THE suit was brought to obtain a declaration that the lands mentioned in the plaint formed the common property of the tárwád of which the plaintiff is the present karnavan, and to have the revenue registry of those lands transferred to his name. It was alleged that the lands in question were the private acquisitions of three of the deceased members of the tárwád, Anandan,

(1) Special Appeal No. 106 of 1877 against the decree of J. W. Reid, District Judge of North Malabar, dated 25th September 1876, reversing the decree of the District Munsif of Tekicherr, dated 23rd March 1875.