

hereditary office, or (in failure of plaintiff to establish the title) to secure the appointment of a fit and proper person to fill defendant's office, and that the account is only prayed for on that understanding.

1877.
November 10.
CHENNA
KESAVARAYA
VAIDELINGA.

If it were clearly shown that defendant is contemplating a breach of trust, or the charity appeared likely to suffer ultimately from Ammani's misfeasance, there might be ground for granting relief beyond the obvious limit of the purpose for which the suit was instituted. But there is no ground for presuming that defendant will abuse his position as trustee or that he will not do his duty as executor.

I think the appeal should be dismissed, and with costs.

BUSTEED, J., concurred.

Appeal dismissed.

APPELLATE CIVIL.

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

VENKITTARAMA PATTAR (PLAINTIFF) APPELLANT v. KAMBARATH KESHAVA MENON (DEFENDANT) RESPONDENT (1).

1877.
December 7.

Unconscionable bargain—Indian Contract Act, Sec. 74.

Plaintiff sued to recover Rupees 643-10-6, value of 1,230 paras of paddy, due under an account dated 8th September 1876. The account, on a cadjan, was for Rupees 315 payable with 12 per cent. interest within 15 days, and in default plaintiff to be paid, on 14th November 1876, paddy for the amount due calculated at the rate of 4 Annas 7 Pies per para. Immediately after the execution of this agreement the price of rice rose, the defendant did not pay within the 15 days, and in the plaint in this suit the price of rice was calculated at 8 Annas per para. *Held* that the bargain was unconscionable. Under the Contract Act, Sec. 74, in a case falling within its terms only reasonable compensation could be given, which in the present case would be interest at a somewhat high rate. The contract in effect was that, if principal with 12 per cent. were not paid on 22nd September, double the amount should be payable on the 15th November. Such a contract a Court of Equity would not enforce.

THE plaintiff sued to recover Rupees 643-10-6, being the value of 1,230 paras of paddy which he alleged to be due under an account dated 8th September 1876. The account was written on a

(1) Second Appeal No. 603 of 1877 against the decree of H. Wigram, Officiating District Judge of South Malabar, dated 14th September 1877, modifying the decree of the District Munsif of Temalprom, dated 14th June 1877.

1877.
December 7.

VENKITTARÁMA PATTAR
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KESHAVA
MENON.

oadjan, but a penalty was sought to be levied on it as on a bond. It was for Rupees 315 payable with 12 per cent. interest within 15 days from date, and in default of payment bound the defendant to deliver to plaintiff on 14th November 1876 paddy for the amount due calculated at the rate of 4 Annas 7 Pies per para.

The defendant admitted the account, but contended that he ought to be relieved against the penal clause.

The District Munsif decreed for plaintiff for the full sum claimed.

The defendant appealed.

The District Judge in modifying the decree of the District Munsif made the following remarks:—"4 Annas 7 Pies per para is the ordinary price of paddy in a favorable year, but it is admitted that in November last the price rose to 6 Annas per para, and now (September 1877) it is as high as 10 or 11 Annas per para. The rate calculated in the plaint is about 8 Annas. The consequence is that if defendant is to pay plaintiff in kind he will on the most favorable calculation have to pay more than double the original loan If Section 74 of the Contract Act is applicable plaintiff will be amply compensated by obtaining a decree for the principal sum Rupees 315 with interest at 12 per cent. from the date of the bond to the date of this Court's decree, with costs on the sum allowed in the Lower Court and further interest at 6 per cent. on debt and costs from this date to date of payment."

The plaintiff preferred a second appeal to the High Court on the grounds, among others, that the defendant was bound by his agreement, and that the condition sought to be enforced was no penalty: that Section 74 of the Contract Act had no application to the present case, and that even if it were applicable the principle upon which the District Judge exercised his discretion was wrong.

T. Ráma Ráu for the Appellant.

Mr. Handley for the Respondent.

The Court delivered the following judgments:—

MORGAN, C.J.—Under the Contract Act (Sec. 74) we could (in a case falling within its terms) give only reasonable compensation which, in the present case, would be interest at a somewhat high rate.

By claiming his interest in the shape of paddy instead of money the plaintiff cannot escape from this principle. Parties may settle by agreement the amount of damages, uncertain in their nature, and when the purchase and delivery of goods is their object, the non-delivery may be made the subject of a stipulation in the shape of a penal sum to be strictly awarded.

1877.
December 7.
VENKITA-
RÁMA PATTAR
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KESHAVA
MENON.

Here the delivery of rice was not the main object; it was used as a mode of computing high interest. The contract in effect is that, if principal with 12 per cent. is not paid, double the amount shall be payable on the 15th November. Such a contract between parties such as we have here a Court of Equity cannot enforce in my opinion.

KINDERSLEY, J.—I think we ought not to enforce the stipulation for paddy. Looking at the better knowledge of the market, probably possessed by the plaintiff, the bargain appears unconscionable. And under the new Contract Act the plaintiff is entitled only to compensation for the money lent. The cases in the second volume of our reports (1) were before the Contract Act. Even a sum, fixed as liquidated damages, is not recoverable under that Act as a matter of course, but it is taken as an outside limit. I would dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Kindersley.

GOVINDAN (DEFENDANT) APPELLANT v. KANNARAN AND ANOTHER
(PLAINTIFFS) RESPONDENTS (2).

1878.
January 7.

Malabar Law—Karnavan, rights of—Tárwád property.

A karnavan who appoints a junior anandravan as his agent to manage part of the tárwád property, collect rents, &c., can, on behalf of the Tárwád family, revoke this authority at any time and take the management into his own hands.

(1) It is presumed that the cases alluded to are—*Arulu Mestri v. Wakuthu Chinnayan*, 2 Mad. H.C.R., 205; and *A. Rámachandra Ráu v. Indukuri Appalaráju*, 2 Mad. H.C.R., 451.

(2) Special Appeal No. 415 of 1877, against the decree of J. W. Reid, District Judge of North Malabar, dated 22nd January 1877, reversing the decree of the Subordinate Judge of North Malabar, dated 7th August 1876.