respondent had over Rs. 2,000 with him in excess of the value of the 3,000 bags purchased by him. He stated in his letter of the 3rd May that he would have purchased the 2,000 bags if he had been paid. Why did he then ask for an extension of time only seven days before? The correspondence conveys the impression that, on the one hand, the appellants intended to withhold payment of the balance of price until the respondent was in a position to assure them that he could purchase the 2,000 bags in time for their shipment on board the *Macedonia*, and that no heavy loss would be entailed on them; while the appellants, who were unable to arrange for their purchase owing to the then state of the market, took advantage of the postponement of payment for which his own conduct gave occasion, to set himself free from the remainder of the obligation, especially when the letter of the 1st May suggested disastrous loss as the probable consequence of his failure to arrange for the purchase of 2,000 bags. Whatever counter-claim the respondent might then have had for the delay in payment, and for breach of that portion of the contract which relates to it, the appellants' conduct does not amount to a renunciation of the contract or to an absolute refusal of future performance. The result then is that the decree will be varied so as to award Rs. 875 instead of Rs. 500 as damages, that the appeal will be allowed to this extent only, and that the memorandum of objections and the rest of the appellants' claim will be dismissed.

We give the appellants the costs of this appeal.

Attorney for plaintiffs—*Wilson.*

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Brandt.

QUEEN-EMPRESS

against

ADEMMA.*

1886. March 29.

Penal Code, s. 312—Miscarriage—With child—Stage of pregnancy immaterial.

A woman is with child within the meaning of s. 312 of the Indian Penal Code as soon as she is pregnant.

Revision Case 43 of 1886.

QUEEN-EMPRESS v. ADEMMA.

Held, therefore, where a woman was acquitted on a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month and that there was nothing which could be called even a rudimentary fœtus or child, that the acquittal was bad in law.

IN criminal case 80 of 1885, on the file of the Sessions Court of North Arcot, the prisoner Bandi Ademma was acquitted on a charge of causing miscarriage under s. 312 of the Indian Penal Code.

The Sessions Judge (H. T. Knox) held that, as the prisoner had only been pregnant for one month, she could not be said to have been with child within the meaning of s. 312.

The record having been called for and notice given to the accused, who did not appear, the Court (Muttusámi Ayyar and Brandt, JJ.) delivered the following

JUDGMENT:—The Sessions Judge finds that the accused, Ademma, being pregnant, used artificial means to cause herself to miscarry, and that she did in consequence get rid of the contents of her uterus; but he acquitted her on the grounds that she had been pregnant, according to her own statement, for only a month, and cannot be said to have been with child, for, according to the evidence, what came away was only a mass of blood.

"There was nothing which could be called even a rudimentary fœtus or child."

The term miscarriage is not defined in the Penal Code. In its popular sense it is synonymous with abortion, and consists in the expulsion of the embryo or fœtus, *i.e.*, the immature product of conception. The stage to which pregnancy has advanced and the form which the ovum or embryo may have assumed are immaterial.

Section 312 requires proof that the woman is "with child," but it is enough if the fact of pregnancy and the intentional expulsion of the immature contents of the uterus are established. The words "with child" mean pregnant, and it is not necessary to show that "quickening," *i.e.*, perception by the mother of the movements of the fœtus has taken place or that the embryo has assumed a fœtal form.

Having regard to the requirements of the law in this respect, we must and do set aside the acquittal in this case and direct a re-trial.

If the accused be convicted, the Judge will no doubt take into consideration, among other things, the former trial and the time which has elapsed since the offence was committed.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

AMBU (PLAINTIFF), APPELLANT,

and

RÁMAN AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1886. April 1, 14.

Malabar law—Otti tenure—Right to make further advance—Second mortgage to stranger without notice to otti holder invalid.

R having conveyed certain land to P on otti tenure (mortgage) in 1852 executed a deed of further charge (ottikampuram) in 1873 to P's widow, and, in 1879, conveyed the jenm (equity of redemption) to her.

Between 1873 and 1879, R mortgaged the same land to A by jenm panayam deed.

In a suit by A to enforce his mortgage:

Held, that inasmuch as R had not given notice to the otti holder, nor given her the option of making the further advance made by A, A had no claim against the land.

APPEAL from the decree of H. J. Stokes, Acting District Judge of South Malabar, confirming the decree of O. Chandu Menon, District Múnsif of Calicut.

Plaintiff, Ambu Náyar, alleged that in 1881 he obtained a decree upon mortgage (panayam) against defendant No. 1, and attached the land mortgaged in execution of the decree; that defendant No. 2 intervened, claiming to be the owner of the land by purchase from defendant No. 1 in 1879.

The claim was allowed.

Plaintiff now sued to enforce his mortgage against the land.

Defendant No. 2, Annamma, pleaded that the land had been demised on otti to her husband in 1852, that she had since that date made a further advance, and in 1879 purchased the equity of redemption.

* Second Appeal No. 803 of 1885.