

whether the right of suit was barred or not, was immaterial, and, therefore, that art. 15(b) of sch. II of the Stamp Act did not apply.

REFERENCE
UNDER STAMP
ACT, s. 46.

A. C. Kunhammu v. Gantz (1) and *Kennedy v. Broun* (2) were cited *contra*.

The judgment of the Court (Kernan, Offg. C. J., Muttusámi Ayyar, Hutchins, and Parker, JJ.) was delivered by

HUTCHINS, J.—A Barrister's fee for services in litigation is a gratuity or honorarium. The relation of counsel and client in litigation creates an incapacity to contract for such services. Such services are not capable of forming such a valuable consideration as will support an action on the client's promise to pay, and conversely, if the client does pay, the payment must be held to be one without consideration.

APPELLATE CRIMINAL.

*Before Mr. Justice Kernan (Officiating Chief Justice) and
Mr. Justice Hutchins.*

THE QUEEN-EMPRESS

against

APPÁVU.*

1885.
November 4.

Ábkári Act, s. 2—Sale—Barter—Payment of wages in liquor.

Payment of wages in liquor does not amount to a sale of liquor within the meaning of s. 2 of the Ábkári Act (Madras Act III of 1864).

THIS was a case referred under s. 438 of the Code of Criminal Procedure by H. R. Farmer, Acting District Magistrate of Trichinopoly.

The facts appear sufficiently for the purpose of this report from the judgment of the Court (Kernan, Officiating C.J., and Hutchins, J.).

Counsel were not instructed.

HUTCHINS, J.—The facts found are that the accused gave the top-watcher a bottle of toddy as wages in consideration of his service in watching the trees the previous night. The question is whether this amounts to "selling" liquor.

(1) I.L.R., 3 Mad., 138.

(2) 13 C.B.N.S., 677.

* Criminal Revision Case 585 of 1885.

QUEEN-
EMPERESS
of
APPÁVU

The District Magistrate's argument is that such a transfer of liquor may be included in the term "barter," and he refers to s. 2 of the Ábkári Act (Madras Act III of 1864), which expressly provides that the term "selling" shall include bartering. But the section does not stop there: it says that selling shall include bartering . . . for liquor, grain, or any other articles. It is clear that labour is not an article, so that, even if the delivery of toddy for wages could be deemed to be included in the general term "barter," it is not included in that particular kind of barter which the section mentions. On the principle *expressio unius est exclusio alterius*, any exchange of liquor for a consideration which is not an article would seem not to be a "selling."

The definition, however, is not exhaustive, and the question still remains whether a payment of wages by liquor is included in the general term selling. It seems to us that it is not. Both in the Contract Act and the Transfer of Property Act a sale is defined to be an exchange of property *for a price*. Section 118 of the latter Act deals with exchanges for other considerations than a money payment and thereby indicates that a price included money only, and that is the ordinary meaning of the word price.

The point is not altogether free from doubt, but a penal statute must always be construed in favour of the subject. On the ground that the Legislature has not made it clear that the delivery of liquor in consideration of wages is an offence, we think the acquittal in this case was right and decline to disturb it.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.

VENKATAGIRI ZAMÍNDÁR (PLAINTIFF), APPELLANT,

and

RÁGHAVA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

*Landlord and tenant—Unregistered lease—Proof of tenancy ejection—
Occupancy rights.*

If a contract of lease is, for want of registration, ineffectual, the landlord is not debarred from giving other evidence of a tenancy and requiring the Court to adjudicate on his right to eject.

Dictum in *Nungali v. Ráman* (I.L.R., 7 Mad., 226) observed upon.

* Appeal 76 of 1884.