

QUEEN-  
EMPRESS  
v.  
MANNATHA  
ACHARI.

taking cognizance of such offence except in the complaint of the husband or of some person on his behalf. Hence the necessity for the existence of a husband and absence of consent or connivance on his part to constitute such offence. But so far as a wife seeking an order for maintenance under chapter XXXVI of the Code of Criminal Procedure is concerned, the wrong done to her is in no way affected by the circumstance of her husband's concubine being married or unmarried, or in case of her being married, whether it is with or without her husband's consent or collusion that she is living in such concubinage.

However, any other than the limited interpretation of the word as defined in the Penal Code is impossible in the face of the concluding clause of section 4 of the Code of Criminal Procedure, which directs that "all words and expressions used herein and defined in the Indian Penal Code and not hereinbefore defined (and the word adultery is not one of those hereinbefore defined) shall be deemed to have the meanings respectively attributed to them by that code."

I concur, therefore, in the order proposed by my learned colleague.

---

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.*

1894.  
January 18.

PALANIAPPA CHETTI AND ANOTHER (DEPENDANTS), APPELLANTS,

v.

PERIAKARUPPAN CHETTI (PLAINTIF), RESPONDENT.\*

*Contract—Promissory note or bond executed in Foreign State—Liability determined by lex loci contractus—Suit upon consideration for the document—Lex fori.*

Where, according to the *lex loci contractus*, a promissory note or bond cannot, in the absence of registration, be a source of legal right, no action on an unregistered note or bond can be maintained. Whether a suit will lie upon the consideration for the instrument is a question of procedure, to be governed by the *lex fori*, and in British India such a claim must either be stated in the plaint as an independent ground of claim, or treated as such and an issue taken at the first hearing. *Paliappa v. Mohammed Khasim*(1) cited and followed.

---

\* Second Appeal No. 797 of 1893.

(1) I.L.R., 5 Mad., 166.

SECOND APPEAL against the decree of T. Weir, District Judge of Madura, in appeal suit No. 1 of 1892, confirming the decree of S. Gopala Chariar, Subordinate Judge of Madura (East), in original suit No. 8 of 1890.

PALANIAPPA  
CHETTI  
v.  
PERIA-  
KARUPPAN  
CHETTI.

Suit to recover Rs. 2,793-13-6, being principal and balance of interest due on a plain cadjan kaikkanakku alleged to have been executed to the plaintiff by the first defendant, the undivided father of defendants 2 and 3, on 16th Kartigai of Sarvajittu (30th November 1887) for Rs. 2,587-0-6, after deducting Rs. 5 said to have been paid on account of interest on 22nd Thai of Virothi (2nd February 1890).

The instrument in question was as follows :—

Received from Kulupirai Nachiappa Chotti's son Peria Karuppan by Palaniappan, son of Sevvalpatti Murugappan, on 16th Kartigai of Sarvajittu year (30th November 1887). On looking into the account in respect of the memorandum of interest which had been executed on 20th Arpisi of Tarana last (3rd November 1884), the sum found due (to you by me) is Rs. (2,587-0-6) two thousand five hundred and eighty-seven and pies six. I shall pay this principal sum, together with interest thereon, at the rate of  $\frac{1}{16}$  per cent. per mensem within the limited time of twelve months from this date and get back this memorandum of interest. To this effect

(Signed) PALANIAPPAN.

Witness—

( „ ) KULIPARAI,

Pa. La. Vi. Ra.

( „ ) CHIDAMBARAM CHETTI,

I know.

The lower Courts decreed in favour of the plaintiff and the defendants preferred this second appeal.

*Mahadeva Ayyar* for appellants.

*Bhashyam Ayyangar* and *Thiruvengkatachariar* for respondent.

JUDGMENT.—We agree with the Judge that the document is not an account stated, but a promissory note or bond. The amount acknowledged to be due upon the memorandum of interest is referred to therein only as the consideration for the sum to be paid with interest within twelve months after date *lex loci contractus* that determines the validity of a document in a foreign state. The document being executed in

PALANIAPPA  
CHETTI  
v.  
PERIA-  
KABUPPAN  
CHETTI.

territory, and no bond or promissory note being, according to the law of that state, operative for the purpose of creating any legal right unless it is registered, the suit cannot be supported as an action on the document.

The only other question which arises for decision is whether the decree can be supported by treating the suit as one brought upon the consideration for the document. It is not necessary to decide for our present purpose whether it is a bond or promissory note. In either case it is not, in the absence of registration, a source of legal right according to the law of Pudukotta. We are of opinion that the question whether a judgment may be given for respondent upon the consideration for the document is one of procedure governed by the *lex fori*. Though the account stated is mentioned in the plaint, it is mentioned as part of the transaction evidenced by the document and not as a distinct ground of claim, the date on which the cause of action arose being described as the date mentioned for payment in the document. But it is argued that a judgment may be given upon the consideration, though the plaint does not refer to it as a distinct count or as an additional ground of claim, and though no issue was taken in regard to it.

According to English practice, a common count upon the consideration and special count on the bill are inserted in the declaration; but in India we are not governed by technical rules of pleadings. It is, however, necessary that it should be either stated in the plaint as an independent ground of claim or treated as such and an issue taken at the first hearing.

As the plaintiff did neither in this case, the decree could not be supported as a decree upon the case disclosed by the plaint or as amended by the issues on which the parties proceeded to trial. This view is in accordance with the decision in *Valiappa v. Mahommed Khasim*(1). We allow the appeal and, setting aside the decrees of the Courts below, direct that the suit be dismissed.

Under the circumstances of this case we order that each party bear his costs throughout.

---

(1) I.L.R., 5 Mad., 166.