procedure is prescribed for his guidance by a special Act. Nor can submission give jurisdiction in a case like this, in which the Forest Settlement Officer has no inherent jurisdiction, but has only a limited jurisdiction as provided by the Forest Act.

The conclusion we come to is that the District Judge should have adjudicated on the appeal and set aside the decree of the Forest Settlement Officer on the ground that the suit was barred by the Pensions Act, and also that that officer had no jurisdiction to entertain it under the Forest Act. As the question to be decided is one of law, we proceed to do what the District Judge ought to have done and accordingly we set aside the decrees of both the Courts below and dismiss the claim with costs throughout.

APPELLATE CIVIL.

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

MARIMUTHU PILLAI (DEFENDANT), APPELLANT,

v.

KRISHNASAMI CHETTI AND OTHERS (PLAINTIFFS NOS. 2, 3, 4), RESPONDENTS.*

1893. Dec. 5, 6.

Negotiable Instruments Act—Act XXVI of 1881, *s.* 46—*Effect of an invalid endorsement of a promissory note by payee—Note recovered by, but not re-indorsed to the payee.*

The defendant gave plaintiff a promissory note payable on demand. The plaintiff endorsed the note to a third party, a creditor of his, who sued the defendant on the note on his refusal to pay. The defendant pleaded that it had been agreed between the payee and himself that the note should not take effect until the payee had performed certain conditions which remained unperformed. The suit was accordingly dismissed. The plaintiff thereupon paid the endorsee and took back the note, which, however, was not re-indorsed, and instituted the present suit against the defendant, who pleaded that the property in the note was not vested in the original plaintiff so as to enable him to maintain the suit. On the decease of the plaintiff before the trial his sons were substituted as plaintiffs:

Held, that, although the property in a promissory note payable to order on demand passes by endorsement and delivery (Act XXVI of 1881, s. 46), the endorsement in this case had been declared invalid in the suit referred to and must therefore be treated as cancelled, and consequently the property in the note was vested in the plaintiff at the date of the suit so as to enable him to maintain it.

---

* Appeal No. 25 of 1893.

MARIMUTHU PILLAI v. KRISHNASAM CHETTI.

APPEAL against the decree of H. H. O'Farrell, District Judge of Trichinopoly, in original suit No. 30 of 1890.

The suit was brought by one Lakshmana Chetti, the payee of a promissory note, and the respondents, his legal representatives, against the defendant—appellant, the maker of the note. The other facts of the case are stated sufficiently for the purpose of this report in the judgment of the High Court.

The District Judge decreed in favour of the plaintiffs and the defendant preferred this appeal.

Rama Rau for appellant.

Bhashyam Ayyangar and *Tiruvenkata Chariar* for respondents.

Krishnasami Ayyar for respondent No. 1.

JUDGMENT.—The question is whether property in the promissory note vested in Lakshmana Chetti at the date of suit so as to enable him to maintain it. The facts, so far as they bear on this point, are shortly these: Lakshmana Chetti endorsed the promissory note to one Patnam Subbaiyar, but appellant refused to pay when the note was presented for payment. Thereupon, Subbaiyar applied to a notary public at Trichinopoly for noting the dishonour and the note was accordingly protested. Thereupon the endorsee sued the maker in No. 37 of 1888 on the file of the District Court, but appellant pleaded the agreement now set up and contended further that the endorsee paid no consideration for the endorsement and that there was, therefore, no valid transfer of the promissory note. The District Judge upheld his contention and dismissed the suit without entering on the question whether any and what consideration passed from the payee to the maker. On the dismissal of this suit Lakshmana Chetti paid Subbaiyar and got back the note, but it was not re-indorsed in his favour. As appellant's fourth witness Subbaiyar states that the note was endorsed to him in part payment of a debt due by Lakshmana Chetti, and that, when the suit failed, Lakshmana Chetti paid him the amount due under it and got back the dishonored note, it is no doubt true, as argued by appellant's pleader, that the property in a promissory note payable to order on demand passes by endorsement and delivery. So it was held in *Pattat Ambadi Marar* v. *Krishnan*(1), and it is also expressly provided for by section 46 of Act XXVI of 1881. But, in the case before us, the endorsement

(1) I.L.R., 11 Mad., 290.

in favour of Subbaiyar was declared by the decree in original suit No. 37 of 1888 invalid and must, therefore, be treated as cancelled. Moreover the payee of a promissory note is entitled to pay an endorsee when the note is dishonored and, striking out the endorsement, to sue the maker for compensation or to re-issue the note. See Byles on *Bills of Exchange*, fourteenth edition, page 195. The objection that respondents have not taken out a certificate to collect the debts due to Lakshmana Chetti is not pressed, the certificate being produced before us.

This appeal fails and is dismissed with costs.

APPELLATE CIVIL.

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

VYTHILINGA PANDARA SANNADHI AND OTHERS (DEFENDANTS), APPELLANTS,

1893. Oct. 18, 20, 26.

v.

SOMASUNDARA MUDALIAR AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Temple repairs—'Katlais' or distinct endowments—Liability for repairs—Proof of custom in absence of endowment-deeds.

The 'panchayatdars' or managers of a temple, being directed by a Magistrate to repair the gateway of a store-house within the temple precincts and under their immediate control, spent Rs. 10-8-0 in so doing from the funds of a 'katlai' or endowment of which they were managers. They then sued the trustees of two other 'katlais' for recovery of the said sum on the ground that, by the usage of the temple, the cost of repairs was payable from the defendants' income, and asked for a declaration that the duty of executing repairs fell upon the defendants' 'katlais':

Held that, in the absence of any endowment or trust-deed regarding the katlais,' the decision must be found in the usage of the temple, upon proof of which judgment was given for the plaintiffs, and a declaration added to the effect that the defendants were liable for repairs to the temple so far as the surplus funds of their 'katlais' should permit.

APPEAL against the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in original suit No. 45 of 1890.

The defendants preferred this appeal.

---

* Appeal No. 64 of 1892.