

claim to the extent of the payment. In the present case the payment was made with the request that the money should be paid out to the party really entitled to the rent. It is a payment made under the impression that the suit though brought by the plaintiff might be treated as being in the nature of an interpleader proceeding under section 490, Civil Procedure Code. The Munsif was wrong in ordering the money to be paid out to the plaintiff without security before the decision of the second appeal, and the party entitled to put him in motion in order to rectify this error, and to call for a refund is the second defendant. The first defendant is, therefore, not entitled to ask for a refund, and I concur in the order proposed by my learned colleague.

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v.
LUIB.

APPELLATE CIVIL.

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

RAMACHANDRA AND OTHERS (PLAINTIFFS), PETITIONERS,

v.

SESHA (DEFENDANT), RESPONDENT.*

1893.
Apr. 20, 24, 27.

Negotiable Instruments Act—Act XXVI of 1861, s. 13—Promissory note—Reference in the note to collateral security, effect of.

An instrument, signed and bearing a 1-anna stamp, was in the following terms, viz., "on deposit of title-deeds named herein-below for value received by me I promise to pay three months after date Rs. 160 to A.B. or order," then followed the details of the title-deeds :

Held, that the instrument was a negotiable instrument.

PETITION under Provincial Small Cause Courts' Act, s. 25, praying the High Court to revise the proceedings of G. Ramasami Ayyar, District Munsif of Coimbatore, in small cause suit No. 213 of 1892.

The plaintiffs, who carried on business in partnership, under the name of Srinivasa and Company, sued to recover principal and interest due under an instrument signed by the defendant and dated 13th October 1827. The instrument in question

* Civil Revision Petition No. 646 of 1892.

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bore a 1-anna stamp, and was in the following terms:—"On deposit of title-deeds noted herein-below for value received by me, I promise to pay three months after date Rs. 160 to the Coimbatore Native Money Savings Bank (Limited) or order;" then follow the details of the title-deeds. It was objected by the defendant that the above instrument was a promissory note transferable only by endorsement, whereas the plaintiffs not being endorsees sued under an assignment of all the assets and credits of the bank in question.

The District Munsif upheld the contention of defendant and dismissed the suit as not being maintainable by the plaintiffs, and he referred to *Pattai Ambadi Marar v. Krishnan*(1).

The plaintiffs preferred this petition.

Pattabhirama Ayyar and *Venkatarama Sarma* for petitioners.

Ramachandra Rau Saheb for respondent.

JUDGMENT.—It is urged on petitioners' behalf that the document sued upon is not a negotiable instrument but an instrument of pledge. It is in these terms:—"On deposit of title-deeds I promise to pay you or order Rs. 160 for value received." The words 'or order,' show that the intention was that the promissory note should circulate from hand to hand, and the question therefore is, whether the terms 'on deposit of title-deeds' control its operation and restrain its negotiability. Deposit of title-deeds as a collateral security does not make a promissory note the less a negotiable instrument, and it was so held in *Wise v. Charlton*(2). Do the words 'on deposit of title-deeds,' import in the case before us more than that a collateral security is also given, or in any way restrain the operation of the promissory note as a negotiable instrument? We do not think an allusion to the mere deposit of title-deeds makes the payment contingent or otherwise qualifies the operation of the document as a negotiable instrument. In our opinion it is not material whether the words occur in the same sentence which expresses the promise, as in this case, or in an additional sentence as in *Wise v. Charlton*(2). The language of the instrument in its plain ordinary sense only signifies that a loan was made and that title-deeds were deposited as a collateral security, and there is nothing to show that the intention was to qualify the operation of the note as a negotiable instrument or to

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

(2) 4 Ad. & E., 790.

regard the pledge as the primary transaction and the promissory note only as a further security. This is the only point argued, and we dismiss this petition with costs.

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CHANDRA
v.
SESHA.

APPELLATE CIVIL.

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

RAMAN NAYAR (PLAINTIFF), APPELLANT,

v.

SUBRAMANYA AYYAN (DEFENDANT), RESPONDENT.*

1893.
April 11, 18.

Defamation—Privilege of Judge.

An action for defamation cannot be maintained against a Judge for words used by him whilst trying a cause in Court even though such words are alleged to be false, malicious and without reasonable cause.

APPEAL against the order of A. Thompson, District Judge of North Malabar, in original suit No. 1 of 1892, rejecting a plaint under Civil Procedure Code, s. 4 (c), on the ground that the suit was barred by the provisions of Act XVIII of 1850.

The plaintiff had been a party to certain suits pending in the Court of a District Munsif, and it was averred in the present plaint that when the suits came on for hearing the District Munsif used certain expressions "in connection with me wilfully and unnecessarily with a malicious intention of putting me to disgrace and without reasonable cause." The above-mentioned words, it was averred, were used neither in the judicial capacity of a Judge who was going on with the trial nor for the purpose of the suit under trial. The plaintiff now sought a decree for damages against the defendant, the said District Munsif, on account of the defamation above referred to. The plaint having been rejected as above stated, the plaintiff preferred this appeal.

Mr. Wedderburn for appellant.

The Acting Government Pleader (*Subramanya Ayyar*) and *Sundara Ayyar* for respondent.

* Appeal No. 77 of 1892.