

from taking water along it, that loss of crop was the damage which resulted, and that the water obstructed flowed into Ayan channels. This appears to me to be clearly a case falling under the clause of the Small Causes Act already cited. The contention that obstruction is not diversion seems to be absurd, since when the flow of water to the cowle lands along the channel was obstructed, it must be diverted in whole or part from the cowle lands, and since it is immaterial whether the diversion was into the tank itself or into Ayan or zamin channels or elsewhere. It is enough that if by the obstruction the flow of water to plaintiff's cowle lands is diverted from them so as to diminish the water-supply and to cause damage.

PERIA-
KARUPPAN
v.
PALANIYANDI.

I set aside the decree of the Subordinate Judge as one passed without jurisdiction, and direct that the plaint be returned to plaintiff for presentation to a Court of competent jurisdiction.

Plaintiff will pay petitioner's costs throughout.

APPELLATE CIVIL.

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

MADRAS DEPOSIT AND BENEFIT SOCIETY, LIMITED
(PLAINTIFF), APPELLANT,

1894.
July 13, 18.

v.

OONNAMALAI AMMAL AND ANOTHER (DEFENDANTS),
RESPONDENTS. *

*Transfer of Property Act—Act IV of 1882, s. 59—Instrument unsigned by any witness
—Evidence Act—Act I of 1872, s. 68—Inadmissibility of the instrument in evidence
to prove the debt.*

A mortgage for more than Rs. 100 which has been prepared and accepted, but which is not attested, is invalid, and it cannot be used in proof of a personal covenant to pay.

APPEAL from the decree of Davies, J., sitting on the original side of the High Court in original suit No. 280 of 1892.

MADRAS
DEPOSIT AND
BENEFIT
SOCIETY,
LIMITED
v.
OONNAMALAI
AMMAL.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

Seshagiri Ayyar and Parthasaradi Ayyanjar for appellant.

Ramanujachariar for respondents.

JUDGMENT.—It is urged that, though the document cannot be used or proved as a mortgage instrument, it may be proved as containing a personal covenant to pay, and we are referred to the decision in *Gomaji v. Subbarayappa* (1). In that case, however, there was no statutory bar to receiving the document in evidence, though by reason of want of registration it could not affect the immovable property comprised therein. In the present case the document is itself excluded by the provisions of section 68 of the Indian Evidence Act, since it purports to create a legal mortgage.

Nor can the plaintiff company fall back upon the deposit of the title deeds. There was no antecedent debt to secure which the title deeds were deposited, and it is clear from the plaint itself that the intention from its inception was to effect a legal mortgage. A legal mortgage was prepared and accepted, but owing to neglect to comply with the requirements of section 59 of the Transfer of Property Act it is invalid.

We must dismiss the appeal with costs.

APPELLATE CIVIL.

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

OLIVER (PLAINTIFF), APPELLANT,

v.

ANANTHARAMAYYAN (DEFENDANT), RESPONDENT.*

Rent Recovery Act—Madras Act VIII of 1865, s. 39—Service by affixing notice of intention to sell on some conspicuous part of the tenant's land—Residence of tenant in foreign territory.

The provision of s. 39 of the Rent Recovery Act that the notice of an intention to sell the land should be served 'at his usual place of abode' denotes some

(1) I.L.R., 15 Mad., 253.

* Second Appeal No. 1601 of 1893.