however, called to the cases—*Vallabhan* v. *Pangunni*(1), *Muttia* v. *Appasami*(2) and *Viraraghava* v. *Venkata*(3). But none of them is in point and this question did not arise in those cases.

I dismiss this appeal with costs.

The appellant preferred an appeal under Letters Patent, section 15, against the above judgment.

Jivaji for appellant.

Respondent was not represented.

JUDGMENT.—We agree with the learned Judge that there is no second appeal.

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

1895. September 4, 17.

RAMASAMI BHAGAVATHAR (DEFENDANT No. 3), PETITIONER,

v.

NAGENDRAYYAN AND OTHERS (PLAINTIFF AND SUPPLEMENTAL PLAINTIFFS), RESPONDENTS.*

Companies Act—Act VI of 1882, *s.* 4—*Illegal association—Business carried on for the purpose of gain.*

Persons more than twenty in number paid each a certain sum monthly to a stakeholder. The sum total of the subscriptions was then paid over as a loan free of interest to one of the subscribers chosen by casting lots, and he was thereupon required to execute a bond with a surety obliging him to continue his monthly subscriptions to the end of the period for which the arrangement was agreed to hold good—that period being as many months as there were subscribers. The bonds in question were executed in favour of the stakeholder and the subscribers. A suit was brought on one of such bonds to recover the amount payable for subscription on account of the period subsequent to its execution:

Held, that the obligees carried on business which had for its object the acquisition of gain within the meaning of Companies Act, 1882, section 4, and accordingly constituted an illegal association and that the suit was not maintainable.

PETITION under Provincial Small Cause Courts Act, IX of 1887, section 25, praying the High Court to revise the decree of

(1) I.L.R., 12 Mad., 454. (2) I.L.R., 13 Mad., 504. (3) I.L.R., 16 Mad., 287.

* Civil Revision Petition No. 597 of 1894.

RAMASAMI BHAGAVATHAR v. NAGENDRAYYAN.

K. Krishnamachariar, District Munsif of Madura, in small cause suit No. 809 of 1894.

The facts were stated by the District Munsif as follows :—

"Suit to recover Rs. 40–12–0, being the balance of subscription and interest thereon, due in respect of a chit subscribed for by the deceased father of the first defendant with the first plaintiff as stakeholder. The said subscriber got his prize and was paid the money, on himself and the third defendant executing the plaint bond as security for the due payment of the subscriptions.

"The first and second defendants, who are the legal representatives of the deceased subscriber, Ruppa Subbayyan, have allowed the suit *ex parte*."

The bond above referred to was executed by the deceased subscriber and defendant No. 3 in favour of plaintiff No. 1 and the other subscribers to an association, the nature of which did not appear from the printed records in the case, but was made apparent by the facts admitted at the hearing, the effect of which is stated in the judgments on the petition. A question was raised before the District Munsif as to whether the suit was maintainable "the "suit transaction relating to a company consisting of more than "twenty subscribers and not registered under the Indian Compa- "nies Act." The District Munsif determined this and the other questions raised in the suit in favour of the plaintiff and passed a decree as prayed.

Defendant No. 3 preferred this petition.

Balaji Rau for petitioner.

Bhashyam Ayyangar and *Gopalasami Ayyangar* for respondents.

SHEPHARD, J.—The question is whether the association formed by the plaintiffs and the deceased Subbayyan, not having been registered under the Companies Act, was an illegal one. If they were associated together for the purpose of carrying on a business and had in view the acquisition of gain, the action, being brought to enforce a contract made for an illegal purpose, clearly cannot be maintained. The facts are not fully stated in the judgment, but it was admitted before us that the chit-fund, or kuri as it is called, in which the deceased Subbayyan and the plaintiffs took part, was managed in the following way. Periodically the subscribers pay each a certain sum to a stake holder. The sum total of their subscriptions is then assigned by casting of lots to one of the subscribers who is thereupon required to execute a bond with

a surety obliging him to continue his subscriptions to the end of the period for which the arrangement is agreed to hold good. The subscriber who at any one drawing happens to take the prize enjoys the benefit of the money without paying interest—and accordingly an advantage is gained by those who gain the prize in the early part of the period as compared with those who, having to keep up their subscriptions all the time, do not receive anything until towards the end of the period. (See *Kamakshi Achari* v. *Appavu Pillai*(1)—also Logan's Malabar District Manual, page 172, and as to analogous institutions in China, Simcox's Primitive Civilization, Vol. II, page 332.)

It can hardly be doubted that persons associated together in this way must be said to carry on a business. It is true that they have no business relations with persons outside their circle as in cases when a trade is carried on; there is no subsisting fund with which such business could be carried on. But money-lending is a business, and here upon each drawing of lots there is a loan of the common fund made by ninety-nine members of the association to the hundredth. The point taken by Mr. Bhashyam Ayyangar was that business was not carried on for the purpose of gain either to the association or to the individual members of it. It was suggested that the real object which subscribers to a chit-fund have in view is, not the chance of an early drawing of the lot, but the securing of a safe deposit for savings and the consequent inducement to save money. It is possible that the idea of enforced economy may weigh with those who contribute to a fund, but I am unable to believe that the chance of gain by the securing of a loan on easy terms is not also an object which contributors have in view. Mr. Bhashyam Ayyangar's argument was the same as that used in *Shaw* v. *Benson*(2). The object of the society in that case was first to advance money to shareholders to enable them to build or purchase houses, and secondly to lend money to shareholders on approved personal security. Interest was charged on the moneys so advanced and the business was so conducted that at the end of the period for which it was intended to go on, the members who had not borrowed would pay £84 on each £100 share, whereas the member who had borrowed from the beginning would pay £119. In that case, therefore, it was rather the lenders

(1) 1 M.H.C.R. 448.

(2) 11 Q.B.D., 563, 570.

RAMASAMI BHAGAVATHAR v. NAGENDRAYYAN.

than the borrowers who acquired gain. It was argued that the object of the society being the encouragement of saving, all members received equal advantage, there was therefore no acquisition of gain. But it was held that at any rate for the lending members there was a gain and therefore the society was an illegal one. In that case, as it seems to me, the contention that the encouragement of saving was the object of the association was more entitled to weight than it is in the present case in which all the subscribers must at the outset have had in contemplation the borrowing of the fund.

The case of *Kraal* v. *Whymper*(1) was cited on the plaintiffs' behalf. The decision, which turns on the particular conditions of the society in question, a society established on the mutual principle for the maintenance of widows and children, appears to me to have no bearing on the present case. The cases in which the object is to make some of the members to acquire gain by their dealings with the rest are expressly distinguished in the judgment. The present case, in my opinion, belongs to that class and, acting on the principle enunciated in the English cases that the Act should be carried out without a too minute or hypercritical consideration of its terms, (*In re Padstow Total Loss and Collision Assurance Association*(2)), I think we are bound to hold that the association was an illegal one and that therefore the decree should be reversed and the suit dismissed. I would make no order as to costs.

BEST, J.—I concur. The object of the association was the business of money-lending—the member to whom the loan was to be given being decided by drawing lots. These lots were drawn once a month, when also were due the monthly subscriptions of each of the members—and the whole amount of the month's subscriptions was paid over to the drawer of the loan for that month, on his executing a bond (with a surety) for his continuing to subscribe during the remaining months for which the kuri was established: the whole number of months of its existence being equal to the number of subscribers, so that each subscriber should have a month in which he must be the drawer of the loan. Those who drew the loan in the earlier months were decidedly gainers, as they at once got the money on condition of repaying the por-

(1) I.L.R., 17 Calc., 786, 808. (2) 20 Ch. D., 137, 145.

tion of it merely in excess of their theretofore paid subscriptions by punctual payment of future subscriptions—no interest being charged except on such subscriptions as should not be paid as they fell due. The hope of gain by drawing an early prize is no doubt the motive which induces persons to become subscribers to these kuris—and such gain is sufficient to bring the associations within the scope of the Companies Act, *Cf. Shaw* v. *Benson*(1) and *In re Padstow Total Loss and Collision Assurance Association*(2). *Kraal* v. *Whymper*(3) is distinguishable, as pointed out in that case itself, from a case in which the object of the business is "to enable some "of the members to acquire gain by their dealings with the rest," which is a not inapt description of the object of the association now in question.

The bond A on which the suit was brought is executed not only to the first plaintiff as stakeholder, but to him and the subscribers to the kuri.

It is, therefore, a contract to pay money according to the rules of an association illegal for want of registration under section 4 of the Companies Act (VI of 1882).

I concur in dismissing the suit without any order as to costs.

ORIGINAL CIVIL.

Before Mr. Justice Subramania Ayyar.

THAYAMMAL (PLAINTIFF),

1895. October 11.

v.

ANNAMALAI MUDALI AND ANOTHER (DEFENDANTS).*

Hindu law—Inheritance—Stridhanam—Sister-in-law.

A childless Hindu widow, who had been predeceased by her parents, died, leaving stridhanam property. Her brother's widow claimed to be entitled to inherit that property and sued to enforce her claim:

Held, that, whether the marriages of the deceased and her mother respectively had taken place in a superior or an inferior form, the plaintiff was not entitled to inherit the stridhanam property in question.

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(1) 11 Q.B.D., 563, 570.
(2) 20 Ch. D., 137, 145.
(3) I.L.R., 17 Calc., 786, 808.
* Civil Suit No. 108 of 1895.