

The salutations of Ramjidasji Sewdutt Roy to Jumna Das Loyia, —Further we have taken lot 1 containing 5 chests of best Patna opium at the 12th sale at your *mandi*, at the rate of Rs. 1,200. The voucher of which for lot 1 containing 5 chests, if you give, we will take. We will pay deposit according to the *Sirkar's sherishla*. The difference in the bids will be given or taken. Should you give the pass of lot 1 containing 5 chests, we will pay you the account of the pass, deducting 5 rupees per chests according to the *sherishla* of the bazar. If you do not cause the *mandi* to be signed on the 12th sale day, then the amount of *mandi* is taken by us, and you will have no claim thereto. This *chitti* is cancelled after midnight of the day of the twelfth sale. Date the 10th of the dark side in Aghran, Sambut 1926.

(On the back.)
Jumna Das Loyia.

The suit was undefended.

Mr. Lowe for the plaintiffs.—The plaintiffs acted as agents for the defendant, and the money sought to be recovered is money paid by the plaintiffs at the defendant's request, and in pursuance of contracts entered into by the plaintiffs on account of the defendant. Whether the transactions in themselves are of a gambling nature is not important for the purposes of this suit. Probably they would be so considered as between the defendant and the persons with whom he contracted. [MARKBY, J., referred to *Bhairabnath Khettri v. Jumanram Dhandaria* (1).]

(1) *Before Mr. Justice Markby.*
The 5th May 1868.

BHAIRABNATH KHETTRI v. JUMANRAM DHANDARIA.

This was a suit on a promissory note for Rs. 5,500 under the Bills of Exchange Act. The defendant obtained leave to defend, and he put in a written statement admitting that he had signed the note, but alleging that he had been forced thereto by threats and violence, and that there was no consideration for the note.

The plaintiff in his written statement

stated "that on 10th November 1867, the plaintiff had in his possession 9 *taz chittis* (each *chitti* being for five chests or lots), 4 *chittis* at 1,405, and 5 at 1,350, for the 11th Government opium sale, and the defendant, having called at the plaintiff's house, as he was in the habit of doing, informed the plaintiff that *tazi chittis* were being sold at a large profit in the market, viz., at a profit of Rs. 1,000 on each chest for the 4 *chittis* at 1,405; and if he should entrust him for sale on the plaintiff's account with the said 9 *chittis* which the defendant knew were held by the plaintiff, he would realize a large profit

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The question involved in this suit, whether or not the plaintiffs' right to recover is affected by Act XXI of 1848

on them; that the plaintiff thereupon delivered the said 9 *chittis* to the defendant and instructed the defendant to sell them on his behalf; that the defendant on the sale thereof was to receive his brokerage of Rs. 5 on each *chitti*.

"That on 4th November 1867, the plaintiff had contracted with the defendant to purchase from him 11 *tazi chittis* for Rs. 1,000, and had paid to the defendant Rs. 500 in cash in part payment of the said sum of Rs. 1,000 being the price of the 11 *tazi chittis* and on 10th November 1867, the plaintiff paid the balance Rs. 500; but the defendant failed to carry out his said contract by giving the plaintiff delivery of the said 11 *tazi chittis*." He stated that the note was given to him by the defendant in satisfaction of these claims.

Mr. Woodroffe and Mr. Jackson for the plaintiff.

Mr. Cowell and Mr. Goodeve for the defendant.

The following issues were fixed by the Court:—

1. Whether the defendant signed the note, being forced thereto by threats and violence.
2. Whether there was any consideration for signing the note.
3. Whether the consideration for the note being the balance of the proceeds of the sale of certain *tazi chittis*, entrusted by the plaintiff to the defendant for sale, the note was void under Act XXI of 1848.

Theonus therefore was on the defendant. He completely failed to prove any case under the first and second issues, and his Council were obliged to abandon them.

As to the nature of the *tazi chitti* transactions, the following evidence was given by one Bhagwan Das, an opium broker:—

"If I have *tazi* for Rs. 1,400, and the

opium is sold for more than Rs. 1,400, the profit is mine; if it is sold at Rs. 1,500, I should get Rs. 100; the man who purchased the *chitti* would pay me the Rs. 100. Each *chitti* covers 5 chests. The *chitti* is a hand receipt. When I buy a *tazi chitti*, no opium passes. When the auction-sale takes place, on that very day, on going to the writer of the *chitti*, the holder of it is entitled to a *darkhast*. Sometimes there are *tazi chittis* for more opium than there is opium for sale on a particular day."

Cross examined.—"There are a certain number of persons who get tickets, and have a right to go into the Exchange to bid for opium. Other persons are not allowed to enter or to bid. They stop down-stairs, and get the news from upstairs of the price at which opium is sold. Shroffs issue the *tazi* and *mandi chittis* of their own motion. If a shroff issues a *tazi chitti*, it is transferable by endorsement. On the day of sale at any time before 12 at night, the *tazi-man* has a right to go to the shroff, and get a *darkhast* for the delivery of opium. If the shroff has not bought any opium, he will take from the bazar; he must buy the *darkhast* from some one who has bought opium. If he has not the opium, and cannot buy a *darkhast*, he will pay the difference in money between the price named in the *chitti*, and the price at the time the *chitti* is presented. If a *mandi chitti* is issued, it passes by endorsement in the same way. The *mandiwalla* will give the *darkhast* to the shroff. He says "take the opium, and give me the deposit," and he buys the *darkhast* either in the auction or in the bazar. If the shroff has to go on with his business, he must take up the *darkhast*; if there are 1,000 chests of opium for sale, and 750 *tazi chittis* are issued, the number of *mandi chittis* is not necessarily 250. There is nothing fixed; according to the option so many *chittis* are issued. The sale in the

has frequently been considered in analogous cases in England—*Jessopp v. Lutwyche* (1), *Oulds v. Harrison* (2), *Knight v. Cambers* (3), and *Rosewarne v. Billing* (4).

MARKBY, J. (after taking time to consider), gave a decree for the amount claimed.

Attorney for the plaintiffs : Mr. *Paliologus*.

bazar goes on after the Government sales are closed, till 12 o'clock, In both it is the same thing : if the article cannot be delivered or procured, then the difference is paid.'"

Re-examined :—"The purchaser named in the *chitti* is a mere name : the man who issues the *chitti* appoints a man of his own, and in his name the *chittis* are issued. He is the issuer's own broker. Sewlal Matilal is the issuer of the *tazi*. According to the ordinary course of business if I had held this *chitti*, I should have had opium delivered to me by Sewlal Matilal. If the average price was more than Rs. 1,350, I would take a *darkhast* from him."

The following is a copy (translation) of a *tazi chitti* produced, but which the plaintiff stated was a cancelled one.

(Sd.) HURKURUN.

Tazi for, 11th sale of *pubha* goods
Price Rs. 130.

SRI NARSINGJI, X
my mark.

No. 4.

To Bhagwan Das (by cash).

Harrolal from Sewlal Matilal, accept our salutations,—Your *tazi* for the 11th Government sale of Patna *pubha* opium sell at the price of Rs. 1,350 had been taken. If on the day of the 11th sale you agree in writing to take it, we will give you one *darkhast* ; we will take deposit according to Government auction. The difference in the biddings will be paid and taken. If we give you a pass, we will take the money, and will give Rs. 5 on each chest at the market rate. You have no claim on the *maggiram* money which we have taken. If midnight of

(a) 26 L. J. (O. S.), C. P., 102.

the day of the 11th sale elapse, the *chitti* becomes null (*dale*).

Reverse.

Bhagwan Das Sri Pita.

Suhun Das (by caste) Harrolal.

Sewlal Matilal.

MARKBY, J., found that the note was given, as to Rs. 900, for moneys of the plaintiff which had been entrusted to the defendant for a purpose not carried out, *viz.*, the purchase of *tazi chittis*, as to Rs. 4,600 for the proceeds of the sale of 11 *tazi chittis* entrusted by the plaintiff to the defendant for sale, and sold by him for the plaintiff ; and ordered the case to stand over for argument on the 3rd issue.

On a future day the case being called on for argument on the point of law :

Mr. *Goodeve*, for the defendant, stated to the Court that it was impossible for him to argue, after the numerous decisions in the Courts at home upon 8 & 9 Vict., c. 109, s. 18, that Act XXI of 1848, which was a copy of the English statute, had any application to the present case. Hereferred especially to *Varney v. Hickman* (a) in which the Judges were unanimously of opinion that the words "no suit shall be brought, &c.," were inserted *ex abundanti cautela*, or were superfluous.

MARKBY, J., said (after consideration) that it was perfectly clear that Act XXI of 1848 had no application to the present case, and referred to *Ashton v. Dakin* (b).

A verdict was accordingly given for the plaintiff.

(1) 10 Exch., 614.

(2) *Id.*, 572.

(3) 15 C. B., 562.

(4) *Id.*, N. S., 316.

(b) W. R., 1858-59, 384.

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