

[ORIGINAL CIVIL.]

Before Mr. Justice Markby.

KANAYALAL AND ANOTHER v. CHAGMAL BATTIA.

1871
Dec. 21

Gambling Act (XXI of 1848)—Tazi Mandi Chittis.

The Gambling Act (XXI of 1848) does not apply to the transaction with respect to opium known as *tazi mandi Chittis*.

This was a suit brought to recover the sum of Rs. 10,000 which the plaint (filed 30th June 1870) stated was the balance of account for money payable by the defendant to the plaintiffs for goods which were bought in Calcutta by the plaintiffs for the defendant at his request, during November and December 1869, and for money payable by the defendant to the plaintiffs for the difference in price of goods bought and sold in Calcutta by the plaintiffs for the defendant at his request during the same time, and for money paid by the plaintiffs to the use of the defendant at Calcutta at his request during the same time, and for work done by the plaintiffs for the defendant at his request during the same time, and for commission due and payable to the plaintiffs in respect thereof, and for interest due on such sums.

The defendant resided in Jeypore, but he wrote to the plaintiffs in Calcutta to make purchases and sales of opium, and to pay money on his account in respect of what are commonly known as *tazi mandi chittis*.

It appeared, on the examination of the plaintiffs, that the amount sought to be recovered by the plaintiffs from the defendant was in respect of *tazi mandi chittis* issued by them in Calcutta on account of the defendant, and for brokerage and commission.

The evidence given showed that the usage and course of dealing with reference to *tazi mandi chittis* was as follows:— That persons wishing to speculate upon the rise or fall of opium apply to shroffs in the bazar to issue to them document

which are known in the bazar as *tazi* and *mandi chittis*: that a *tazi chitti* was an agreement by the shroff issuing the same, to deliver to the holder of such *chitti* a *darkhast* or certificate of purchase for one lot or five chests of opium of the Government sale mentioned in such *chitti* at the price named therein, or at the option of the holder, in lieu of delivering such *darkhasts*, to pay to him the difference between the actual market price thereof and the price named in the said *tazi chitti*; that a *mandi chitti* was an agreement on the part of the shroff issuing the same to accept and pay for at the price named in such *chitti*; upon demand being made by the holder of such *chitti* a *darkhast* for one lot of opium of the Government sale mentioned in such *chitti*; that such *chittis* were issued by the shroffs to their customers at a rate of commission, varying from two to four rupees for each *chitti*, and that it was usual for the customers to deposit with the shroffs a sum of money to cover any loss which the shroffs might sustain by reason of having to carry out the agreements contained in the said *chittis*; that where the customer was well known to the shroff, credit was given by the shroff for the price of the *chittis*, he undertaking the liability without requiring a deposit, upon the understanding that the customer would, in the case of *tazi chittis*, either provide him with such *darkhasts* as might be required in order to meet such *chittis*, or pay the difference between the actual market price of such *darkhasts* and the price mentioned in such *tazi chittis*, and would, in like manner, *mutatis mutandis*, provide for any loss which might accrue upon the *mandi chittis*; that if the shroff should himself purchase or sell *darkhasts* for the purpose of meeting his liabilities, he should be entitled to charge the customer brokerage at the rate of one rupee per lot of five chests; that *tazi* and *mandi chittis* when so issued are sold by the persons to whom they are issued by the shroffs, and are, by the usage of the bazar, transferable by endorsement, and at midnight of the day of the Government sale mentioned in such *chittis*, if the price of opium in case of *tazi chittis* be higher, and in case of *mandi chittis* lower, in the market than the price mentioned in such *tazi* or *mandi chittis*, the holders of such *tazi* or *mandi chittis* respectively present the same to

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such shroffs for acceptance, and the shroffs, upon accepting the said *chittis*, become liable to the holders according to the tenor thereof, looking to their customers on account of whom such *chittis* are issued to indemnify them; and that such *chittis*, as are not presented for acceptance before midnight of the day of the sale, become void according to bazar usage, and in some instances are retained or destroyed by the holders, and in others returned to the shroffs, who are in the habit of paying four annas or eight annas for each of such *chittis* as are delivered up to them to the person producing and delivering up the same.

The following are translations of a *tazi chitti* and *mandi chitti* produced in the suit:

Mark Chagmal Battia's
Account.
Tazi of twelfth sale,
Rs. 1,150.
Signature of Prensukh.
No. 674.

Sri Ramji.

Ramjidasji Sewdutt Roy's salutations to Bhimraj Daluram.—We have sold to you 1 lot of best Patna opium containing 5 chests of the twelfth sale for Rs. 1,150. The voucher of the 5 chests we will give you, if you, if you consent to take, of the twelfth sale, and we will take deposit money according to the rules of the *Sirkar's* Government *sherishta*. The difference in the bids we take and give. Should we give you the pass for 5 chests, we will do so according to the bazar *sherishta*. We will deduct Rs. 5 per chest, and take the amount covered by the pass. The amount of *tazi* I have taken; on this you have no lien. This *chitti* is cancelled after midnight of the day of the twelfth sale. The 5th day of the dark side in Aghran, Sambat 1926.

(On the back.)

Bhimraj Daluram.
Gopal Khettri.
Joderaj Gond.
Maniram Singhania,
Krishna Ram Mohan Lal received the money in full.

Mark Chagmal Battia's
Account.
Mandi of twelfth sale,
Rs. 1,200.
Signature of Prensukh.
No. 448.

Sri Ramji's aid.

Sri Hanumanji.

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 sherishda*. The difference in the bids will be given or taken. Should you give the pass of lot 1 containing 5 chets, we will pay you the account of the pass, deducting 5 rupees per chests according to the *sherishda* 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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