NOTES OF CASES IN THE COURT OF THE RECORDER AND IN THE SUPREME COURT OF JUDICATURE AT MADRAS, COMMENCING IN THE YEAR 1798, AND ENDING IN THE YEAR 1816, BY SIR THOMAS STRANGE.

Volume I.

CASES DETERMINED IN THE COURT OF THE RECORDER OF MADRAS.

From 1798 to 1801.

MANDEVILLE *v.* HAYES. (1798. *Dec.* 14*th.*)

Whether an appeal lies from a judgment of nonsuit, the damage, if any, remaining wholly unascertained. Qu.

A DECREE, in the nature of a judgment of non-suit, had been obtained in the Mayor's Court by the Defendant *Hayes*, in an action of crim. con. with the Complainant's wife, in which the damage was laid at 20,000 Pagodas. The Complainant having appealed to the Governor in Council, the decree of the Mayor's Court was affirmed with costs. The Complainant, upon this, lodged an appeal from the order of the Governor in Council to His Majesty in Council, reserving liberty to the Defendant to move to have the petition for the purpose taken off the file, on the ground of it's not appearing, to what extent, if at all, the Complainant was aggrieved.

On the publication of the new charter, the question came on to be argued before the Court of the Recorder, **[2]** to which the proceedings in the Court of the Governor in Council had been transferred.

Williams, for the Defendant. *Samuel*, for the Complainant.

The *Recorder* was of opinion that, as, in the nature of the suit, the damages were arbitrary, and the nonsuit had left it uncertain, what, if any, they ought to be, there could be no appeal; the charter having declared that no appeal shall be allowed, unless the value of the matter in dispute shall exceed the sum of a thousand Pagodas.—It would have been different (he thought) in an action of *assumpsit*, or the like, where the value of the matter in dispute appears, by reference to some *certium quid*, as a note of hand, or a balance of an account.

Appeal ordered to be taken off the file.

The charter having reserved to the *King in Council* a power of admitting a special appeal upon terms, the Complainant presented his petition to His Majesty accordingly, by whom leave was given him, upon his proceeding within

two years; but he never took any further steps in the case, and the decree of the Mayor's Court remained confirmed by that of the Governor in Council.

See the case of *Duberley* v. *Gunning*,* in which the want of a criterion is stated by a majority of the Judges, as a reason for not granting a new trial in this species of action; it being agreed by the Court that, in the case before it, the damages given by the jury were excessive.

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[3] PARK, EXECUTOR OF DOUGLASS *v.* MOOTIAH ADMINISTRATOR OF VIDENAIDA. (1799. *March 4th, April 30th.*)

MOOTIAH *v.* PARK.

A corrupt durbar transaction.

THE original bill was filed in the Mayor's Court in 1794, to recover, from the estate of *Videnaida*, the intestate of the original Defendant, the sum of 59,000 Pagodas, upon a note dated 30th June 1780, payable in three months, and a mortgage bond of the 21st of August following, alleged to have been given for the balance of an account, then settled. An account current was annexed to the bill, giving credit for various sums paid on the bond.

The answer of *Mootiah* admitted the execution of the note and bond, in favor of the Complainant's testator *Douglass*, but it stated, that *Douglass* was the confidential agent of a gentleman of the name of *Johnson*, who was the party interested in these instruments; and that they had been executed by *Videnaida* the intestate, at the instance of the then Nabob of the Carnatic, in consideration of services rendered him by *Johnson*; *Videnaida* and *Douglass* having been both merely nominal parties in the transaction.

The cross bill, praying the delivery of them up, on the ground that the note was barred by the statute of limitations, and that the bond was bottomed in an illegal consideration, detailed the services in which it alleged the latter to have originated, of which the answer of *Park* professed total ignorance.

Both answers having been replied to, witnesses were examined, and the two suits came on to be heard toge-[4]ther in the Court of the Recorder, upon the pleadings and depositions, together with a report by the Master.

Hall, for the original Complainant, and cross Defendant. *Anstruther*, for the original Defendant, and cross Complainant.

It was admitted in argument, that the statute had run upon the note; but it was contended that it might, notwithstanding, be tacked to the bond, which the Recorder denied, proceeding in substance, as follows:

RECORDER. With respect to the cases that have been cited in favour of tacking, it is sufficient to say of them, as applicable to the present, that they were cases upon bonds, where no question of the statute of limitations existed · which sufficiently distinguishes them.

But the point is, what is there here to tack the note to? which brings me to the question on the bond, upon which nothing can be clearer, than that payment of it can never be enforced.

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[2] * 4 Term Rep., p. 651.