

APPELLATE JURISDICTION (a)

*Referred Case No. 24 of 1863.*ANNÁGURUBALÁ CHETTI *against* KRISTNASVAMI NAYAKKAN.

When a plaintiff attempts to enforce as a contract of loan binding upon the defendant immediately upon its execution an instrument which he verbally agreed at the time should not so operate, and for which the defendant received no consideration, the latter may give evidence of the verbal agreement.

CASE referred for the opinion of the High Court by R.B. Swinton, the Judge of the Court of Small Causes at Tanjore.

1863.
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of 1863.

Suit No. 1565 of 1863 was brought for rupees 272, being principal and interest due under a bond, dated 25th August 1860, given by the defendant to the plaintiff and in the following terms :—" Having borrowed of you on account of my necessities Company's rupees 200, and having received the same in ready cash on my inspection, I will repay it with interest at one per cent. per month whenever the owner demands." The defendant proposed to prove by oral evidence that the consideration for the bond was, not the loan of 200 rupees therein mentioned, but the plaintiff's abstaining from interfering to prevent the defendant obtaining another loan of rupees 5,000 which he was then negotiating, and that the plaintiff " did not so abstain or use his favourable influence to get the loan," that such loan was not negotiated, and that therefore the amount secured by the bond was not due. The Judge thought the oral evidence inadmissible, but submitted the question hereinafter mentioned.

No counsel were instructed.

The facts appear from the following

JUDGMENT :—The question submitted for our decision is, " whether the defendant could prove by oral evidence that the receipt of rupees 200 by the plaintiff was to depend upon the plaintiff's action regarding another loan, and that the plaintiff did not take such action regarding the other loan."

(a) Present : Scotland, C. J. and Freese, J.

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The defendant does not deny the execution of the instrument sued upon, nor the terms of it, but he seeks, as it appears to us, to shew that there was no consideration received for it, and further that it was expressly declared and agreed when the instrument was signed by the defendant, that it was not to operate as a binding contract except in the event of the plaintiff giving his aid as promised, in obtaining the loan of 5,000 rupees mentioned in the case; and that it was executed and received by the plaintiff upon that understanding. In effect, that the instrument never became a binding agreement with the plaintiff. If what the defendant alleges be true, the plaintiff is attempting to enforce, as a contract of loan binding upon the defendant immediately upon its execution, an instrument, which he verbally agreed at the time should not so operate, and for which the defendant has received no consideration. We are of opinion that it was open to the defendant to give evidence of the alleged verbal arrangement entered into at the execution of the instrument. There is, no doubt, risk in admitting such evidence, and it should certainly be received with great caution and very scrupulously considered; but, if the defendant's case be true, and the evidence were excluded, the plaintiff would be assisted in practising a deceit upon the defendant.

For these reasons, we answer the question submitted in the affirmative.
