APPELLATE JURISDICTION (*a*)

Referred Case No 19 *of* 1863.

KÁMAKSHI ÁCHÁRI *against* APPÁVU PILLAI.

A transaction is not necessarily a lottery within Act V of 1844 simply because a matter of whatever kind is agreed to be decided by lot.

Where twenty persons agreed that each should subscribe 200 rupees by monthly instalments of ten rupees, and that each in his turn as determined by lot should take the whole of the subscriptions for one month :—*Held* that the agreement was not illegal, and that a suit might be brought on a bond given by one of the subscribers, who had received one month's subscriptions, to secure the payment of his subsequent monthly instalments.

1863. *November* 23. *R. C. No.* 19 *of* 1863.

CASE referred for the opinion of the High Court by R. B. Swinton, the Judge of the Court of Small Causes at Tanjore. The Suit No. 1493 of 1863, out of which the case arose, was brought in the Small Causes Court to recover rupees 150, being rupees 70 balance of principal and rupees 80 being interest at 12½ per cent. per month, due under a bond dated the 20th July of 1862 and to the following effect:

Having this day borrowed on account of my necessities rupees 100, I promise to repay the same at the rate of rupees 10-0-0 on the 30th of each month, beginning from this month Ádi of Dundubhi (July-August 1862), up to Chittirai of Rudirodgári (April-May 1863), and to endorse the same in this bond, and, in default of any of the instalments, to pay the whole sum then remaining due with interest thereon at 12½ per cent. per month from the date of the bond."

At the hearing of the case, the plaintiff, upon being examined as a witness, stated that he, the defendant and eighteen others had entered into an agreement that each should subscribe the sum of rupees 200-0-0, by monthly instalments of ten rupees, each of the subscribers in his turn as determined by lot, taking the total subscription for one month ; that the plaintiff was the agent in the business; that the defendant got his lot, that is the whole sum of 200 rupees, in the tenth month, and that he having already subscribed and paid rupees 100, the contested bond was taken from him for the remaining rupees 100 in order to ensure the future regular payment of his monthly instalments.

(*a*) Present : Scotland, C. J. and Frere, J.

1863. November 23. R. C. No. 19 of 1863.

Upon the foregoing facts, the Judge was of opinion "that the suit was barred by Act V of 1844 and by general rules of good policy," and accordingly dismissed it without entering upon the merits of the case.

Act V of 1844—"An Act for the suppression of all lotteries not authorized by Government,"—enacts that in the territories subject to the Government of the East India Company "all lotteries not authorized by Government shall from and after the 31st day of March 1844, be deemed and are hereby declared common and public nuisances and against law."

The question for the decision of the High Court was whether or not the suit "was barred by Act V of 1844 or by general rules of good policy?"

George Branson, for the plaintiff. The agreement in respect of which the bond was given is not a lottery within the meaning of Act V of 1844. It is merely an arrangement under which each subscriber is entitled to a loan of the 200 rupees in turn, such turn to be determined by lot.

The Court delivered the following

JUDGMENT:—The suit was brought upon a bond given for part of a sum of money obtained upon loan from a common fund by means of the drawing of lots, and the question submitted for decision in effect is, whether or not the arrangement by which the loan had been obtained was illegal as being a lottery within the meaning of Act V of 1844, and we think the question must be answered in the negative.

Lotteries ordinarily understood are games of chance in which the event of either gain or loss of the absolute right to a prize or prizes by the persons concerned, is made wholly dependent upon the drawing or casting of lots, and the necessary effect of which is to beget a spirit of speculation and gaming that is often productive of serious evils. It is to lotteries of this description that the Act, we think, must be construed to apply when declaring them to be "common and public nuisances and against law," and as such providing for their suppression. Here no such lottery appears to have taken place. It is not the case of a few out of a number of subscribers obtaining prizes by lot. By the arrangement all get a return of the amount of their contribu-

1863. November 23. R. C. No. 19 of 1863.

tions. It is simply a loan of the common fund to each subscriber in turn, ann neither the right of the subscribers to the return of their contributions, nor to a loan of the fund is made a matter of risk or speculation. No loss appears to be necessarily hazarded, nor any gain made a matter of chance, except perhaps as regards the payment of interest, which is only an ordinary incident of the contract of loan ; and the benefit in this respect all, it seems, are intended to enjoy alike. The drawing of lots appears only to be made the means of deciding the order or turn in which the loan is to be made to each member.

There is in this, we think, nothing of that risk, speculation, and gaming which make ordinary lotteries a common and public nuisance, and which it was the policy and intention of the Act in question to provide against. The utmost that can be said is that it is an arrangement that, like many other unobjectionable matters of agreement, is very likely to be attended with litigation, and we think that a transaction is not necessarily a lottery within either the spirit or letter of the Act, simply because a matter of whatever kind is agreed to be decided by lot. For these reasons we are of opinion that the claim of the plaintiff was not affected by the provisions of the Act.

NOTE.—See *S. A. No.* 169 *of* 1857, Mad. S. D., 1858, p. 53.

APPELLATE JURISDICTION (*a*)

*Criminal Petition No.*135 *of* 1863.

Ex parte SUPPAKON and others.

Fraudulent gain or benefit to the offender is not an essential element of the offence of false personation under Sec. 205 of the Penal Code, and a conviction for false personation may be upheld even where the personation is with the consent of the person personated.

1863. November 23. Crim. P. No. 135 of 1863.

THIS was an appeal against the sentence passed by J. H. Blair, Acting Sessions Judge of Tinnevelly, on the prisoners in Case No. 48 of 1863.

The first prisoner was charged with having on the 6th February 1863 falsely personated Sangukon, the fourth pri-

(*a*) Present : Scotland, C. J. and Frere, J.