

APPELLATE JURISDICTION (a)

Referred Case No. 10 of 1863.

SUPPANACHARI and another.....Appellants.

CHAKKARA PATTAN and another.....Respondents.

Where a judgment was passed against several defendants jointly and severally and some of them paid the whole of the judgment-debt :—
Held that they might sue the others for contribution.

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

1863.
August 13.
R. C. No. 10
of 1863.

No counsel were instructed.

The facts appear from the following

JUDGMENT :—The plaintiffs and two defendants were defendants in Suit No. 579 of 1860 before the District Munsif of Combaconum. The decree was against the plaintiff and defendants jointly and severally, and the whole of the judgment-debt having been paid by the present plaintiff's they have sued the defendants for contribution.

The question referred by the Judge of the Court of Small Causes at Tanjore, who has passed a provisional decree, is whether the action will lie ?

There exists no doubt of the plaintiffs' right to the contribution sought. The plaintiffs and defendants being subject to a decree against them jointly, the whole of the amount was levied from the plaintiffs. This is exactly the case put by Lord Kenyon in *Merryweather v. Nixon*(b).

It is the case of one man having been compelled by process of law to pay money which another was legally compellable to pay ; and the law in such cases presumes that it was paid at the request of that other(c).

The judgment delivered has our full concurrence.

(a) Present : Phillips and Holloway, JJ.

(b) 2, Smith, L. C., 5th ed., 456 : 8, T. R., 186, S. C. "The distinction is clear between this case [of one tortfeasor attempting to recover contribution against another] and that of a joint judgment against several defendants in an action of assumpsit." See *Sadler v. Nixon*, 5, B. & Ad., 936, *Blackett v. Weir*, 5, B. & C., 387-8.

(c) 2, Smith, L. C., 146.