

## APPELLATE JURISDICTION. (a)

*Referred Case No. 1 of 1863.*VENGAPPAYAN *against* RAJÁPAYAN.

When the full sum specified in a bond was admitted to be due, the fact of the plaintiff having on condition of the payment of half the amount by a certain day agreed to remit his claim to the other half, cannot affect his right to recover the entire amount due on the defendant failing to fulfil the condition.

1863.

February 16.  
R. C. No. 1  
of 1863.

CASE referred for the decision of the High Court by R.B. Swinton, Judge of the Small Causes Court of Tanjore. The plaintiff sued on a bond dated the 21st Chittarai of Durmati (1st May 1861) to secure Rupees 300, which was to be paid on demand in default of payment of Rupees 150. part thereof, on the 30th Kárttika of Durmati (13th December 1861). The defendant failed to pay the Rupees 150 on the day appointed; and the Judge of the Small Cause Court decreed that the defendant should pay the plaintiff Rupees 316 with further interest on Rupees 300 at 1 per cent. from the date of the decree, contingent upon the final decision of the High Court.

No counsel were instructed.

The judgment of the Court was delivered by

SCOTLAND, C. J. :—We are of opinion that the Judge has rightly decided this case. It is admitted that the full sum specified in the bond was actually due, and the fact of the plaintiff having, on condition of the payment of half the amount by a certain day, agreed to remit his claim for the other half, cannot affect, in any way, his just right to recover the entire sum due, on the defendant failing to fulfil the condition. There is no ground for saying that any part of the amount agreed to be paid is to be treated as in the nature of a penalty.

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