1863. *January* 19. *S. A. No.* 20 *of* 1862.

The costs throughout are to be discharged by the defendant.

Decree reversed.

NOTE.—Recent English cases as to maintenance and champerty are *Anderson* v. *Ratcliffe*, E. B. & E. 806 ; 28 L. J. Q. B. 32 S. C. : *Sprye* v. *Porter* 7 E. & B. 58 : 28 L. J. Q. B. 64 S. C. : *Simpson* v. *Lamb* 7 E. & B. 84 : *Knight* v. *Bowyer* 27 L. J. Ch. 521 : *Bainbridge* v. *Moss*, 3 Jur. N. S. 58 : *Earle* v. *Hopwood* 9 C. B. N. S. 566 : 7 Jur. N. S. 775 S. C.: *Hare* v. *London and N. W. Ry. Co.* Johns. 722: *Tyson* v. *Jackson*, 30 Beav. 384, 387.

ORIGINAL JURISDICTION (*a*)

Original Suit No. 1 *of* 1862.

MANSUK DÁS *against* RANGÁYYA CHETTI.

In an action by a vendor against a vendee for non-performance of a contract to deliver goods, which specifies no time for delivery, the measure of damages is the difference between the contract-price and that which goods of a like description bore on the lapse of a reasonable time for delivery.

Where a vendor contracts to deliver goods within a reasonable time, and payment is to be made on delivery, if before the lapse of that time he merely expresses an intention not to perform the contract, the purchaser cannot at once bring his action, unless he exercise his option to treat the contract as rescinded.

1863. *January* 23. *O. S. No.* 1 *of* 1862.

THIS was an action by a vendee against a vendor for not delivering cotton pursuant to a contract entered into on the 16th of July 1862. The contract was oral and payment was to be made on delivery, for which, however, no time was specified.

Norton and *Mayne* for the plaintiff.

Branson and *Arthur Branson* for the defendant.

The plaintiff having proved his right to recover, the question was what was the rule for measuring the damages?

SCOTLAND, C. J. :—In cases like the present the measure of damages is the difference between the contract-price and that for which goods of the same description and quality as the goods contracted for could have been obtained in the market; and here, I think, we must look at the market-price on the lapse of a reasonable time for delivery. The question then is, when did such reasonable time expire? Looking to

(*a*) Present Scotland C. J. and Bittleston, J

1863. January 23. O. S. No. 1 of 1862.

the evidence that the demand for cotton was very great at and for some time after the execution of the contract and that there was therefore difficulty in obtaining the means of fulfiilling this contract on the part of the vendor,—all of which was well known to the plaintiff when the contract was made,—in this case we do not think that nine days were an unreasonable time to allow for preformance.

It appears, no doubt, in evidence that on the 16th of July the defendant had told the plaintiff that he did not intend to execute the contract. But if a vendor contract to deliver goods within a reasonable time—payment to be made on delivery—and before the lapse of that time,—before the contract becomes absolute,—he says to the purchaser 'I will not deliver the goods,' the latter is not thereby immediately bound to treat the contract as broken and bring his action. The contract is not necessarily broken by the notice. That notice is, as respects the right to enforce the contract, a perfect nulity, a mere expression of intention to break the contract, capable of being retracted until the expiration of the time for delivering the goods. It cannot be regarded as giving an immediate right of action, unless, of course, the purchaser thereupon exercise his option to treat the contract as rescinded, when he may go into the market and supply himself with similar goods, and sue upon the contract at once for any damage then sustained. The law on this subject will be found in *Leigh* v. *Paterson*(*a*) and *Phillpotts* v. *Evans*(*b*), the authority of which cases was upheld in *Hochster* v. *DeLatour*(*c*).

The damages will therefore be calculated in reference to the price of cotton on the 25th of July, as that was the earliest day on which it can fairly be said that a reasonable time had elapsed.

BITTLESTON, J. concurred.

Judgment for the plaintiff for rupees 3,700 *and costs.*

(*a*) 8 Taunt. 540. (*b*) 5 M. & W. 475.
(*c*) 2 E. & B. 678 ; 22 L. J. Q. B. 455 S. C. and see *Ripley* v. *McClure* 4 Ex. 345, 359.

1863. January 23. O. S. No. 1 of 1862.

NOTE.—As to the doctrine that where a party to a contract utterly repudiates it, or puts it out of his power to perform it, the injured party may at his option sue at once or wait till the time for performance has elapsed, see, besides *Hochster* v. *DeLatour* above cited (where Lord Campbell, C. J. overruled Parke B.'s doctrine in *Philpotts* v. *Evans*, that the injured party must wait till the time fixed for performance), *Raid* v. *Hoskins* 25 L. J. Q. B. 55, S. C. in error 26 L. J. Q. B. 5; *Avery* v. *Bowden*, 5 El. & B. 714, S. C. 25 L. J. Q. B. 49 : in error 6 El. & B. 953, S. C. 26 L. J. Q. B. 3 : *Barwick* v. *Buba* 26 L. J. C. P. 280 : *Pole* v. *Cetcovich*, 80 L. J. C. P. 102 : *Danube and Black Sea Railway* v. *Xenos*, 31 L. J. C. P. 84 ; and Mayne on Damages, pp. 79, 80.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 53 *of* 1862.

GURUMURTTI NÁYUDU.....*Appellant.*

PÁPPÁ NÁYUDU.....*Respondent.*

When a Court has granted a review, the High Court on appeal will not interfere, though the grounds for granting the review may have improper or insufficient.

On an enquiry whether a signature is genuine, the signature cannot be compared with a document not before the Court, or with one of which the authenticity is disputed.

1863. January 23. S. A. No. 53 of 1861.

THIS was a special appeal against the decree of J. Ratliff, the Civil Judge of Bellary, in Appeal Suit No. 245 of 1861, in which he reviewed and reversed a decision of his predecessor P. Irvine, reversing the District Munsiff's judgment in favour of the plaintiff in Original Suit No. 574 of 1861.

The plaintiff sued on a bond alleged to have been executed by the first defendant. This defendant, Páppá Náyudu, pleaded that the bond was a forgery. The District Munsif decreed for the plaintiff : the defendant appealed, and Mr. Irvine reversed the decree.

Mr. Ratliff, Mr. Irvine's successor, granted a review of judgment, caused the defendant to make a signature before the Court, and then compared the signature to the bond with this and with four others of the same party, procured from the superintendent of police and the office of the district engineer. From this evidence Mr. Ratliff came to the conclusion that the bond was not a forgery, and decided against the defendant.

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