

APPELLATE JURISDICTION (a)

*Referred Case No. 4 of 1862.*HOTUMÁN SÁHIB *against* HUSAIN SÁHIB.

An instrument to the following effect " On the 14th December 1861, we A. and Co. bind ourselves to pay with interest to you B. and C. rupees 566-10-0, being the balance of dealings held with your firm, and the amount received this day from you in cash on account of stamp":—
Held to be neither a bond nor a hundi, but to be in the nature of a promissory note, and to come within the description in clause 4, schedule A of Act XXXVI of 1860.

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CASE referred by R. J. Melville, the Acting Judge of the Court of Small Causes at Chittur.

No counsel were instructed.

The Court delivered the following

JUDGMENT :—The question submitted for our opinion in this case is, whether or not, under Act XXXVI of 1860, the instrument upon which the plaintiff sued in the Court of Small Causes at Chittur was sufficiently stamped when produced in evidence? It bore a one-anna stamp, and the Acting Judge, being of opinion that it was a bond, refused to receive it except upon payment into Court of a sum equal to the stamp of five rupees and the penalty required by clause 2, section 13 of the Act. This sum was accordingly paid in, subject to the opinion of this Court upon the point, and the plaintiffs had judgment given in their favour.

The instrument is as follows :—

" On the 14th December 1861, we, Pungalam Hussain Sáhí and Co., of Pettamur and partners of the sugar manufactory at the village of Palachervu in the ta'aluk of Chil-lagattu in Bangalore Division, bind ourselves to pay, with interest, to Hutman Sáhí and Ismál Sáhí of Periyamettu, in Madras, the sum of rupees (566-10-0) five hundred and sixty-six and annas ten, being the balance of dealings held with your firm and the amount received this day from you in cash on account of stamp."

The point to be considered is, whether this instrument comes properly under the 4th clause in schedule A of the Act (Act XXXVI of 1860), for, if so, then it becomes an

(a) Present Scotland, C. J. and Phillips, J.

instrument for the payment of money "otherwise charged for," and consequently not a bond or other obligation within clause 8 of the same schedule. We are of opinion that although not a hundi, it is in the nature of a promissory note, and comes within the description in clause 4: "other orders and obligations for the payment of money not being bonds or instruments or writings bearing the attestation of one or more witnesses."

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APPELLATE JURISDICTION (a)

Regular Appeal No. 20 of 1862.

PITCHAKUTTI CHETTI.....Appellant.

KAMALA NAYAKKAN.....Respondent.

An instrument which is in terms a temporary lease is as binding on the lessor *qua* lease, where the tenancy is to commence at a future day, or on the determination of existing lease under which another lessee is in possession, as where it commences immediately.

The law of England as to the offences of maintenance and champerty does not apply to natives of India. In dealing with objections to their contracts, on the ground of maintenance or champerty, the Court must look to the general principles regarding public policy and the administration of justice upon which that law at present rests.

To constitute "maintenance" improper litigation must have been stirred up with a bad motive or purpose, contrary to public policy and justice.

"Champerty" is a species of "maintenance," and of the same character, but with the additional feature of a condition or bargain providing for a participation in the subject-matter of the litigation.

Specific performance decreed of a lease, though the lease formed of an arrangement whereby, as a consideration for the lease, the defendant was to lend the defendant money to enable him to commence legal proceedings against the then tenant of the intended lease.

THIS was a regular appeal from the report of it, namely Cotton, the Civil Judge of Madras, and two others, No. 1 of 1858.

The defendant was proprietor of the house (that of one Chelammayanayakkannur, which was executed. It is de-
posed by one of the same par-
ty. The defendant was another party who
individual is deposed to have
determined to institute legal proceedings in the court calling for the records

(a) Present if he was concerned, and comparing