

APPELLATE JURISDICTION (a)

Referred Case No. 2 of 1862.

MUTTIYÁ PILLAI against WESTERN.

The fourth section of the Statute of Frauds applies to cases in which the defendant alone is a British-born subject.

CASE referred for the opinion of the High Court by R. B. Swinton, the Judge of the Court of Small Causes at Tanjore, under Act XLII of 1860, section 13. 1862.
October 10.
R. C. No. 2 of
1862.

The plaintiff sued the defendant for moneys due on account of goods sold and delivered to one MacFarland, which moneys the defendant promised to pay. The defendant pleaded non-assumpsit, and it appeared that his promise was not in writing. The plaintiff was a Hindu, the defendant a British-born subject, and the Court of Small Causes dismissed the suit, subject to the opinion of the High Court as to whether the Statute of Frauds applied.

No counsel were instructed.

The judgment of the Court was delivered by

SCOTLAND, C. J. :—The question referred for the opinion of the High Court is whether the Statute of Frauds is applicable only to cases where both parties are European British subjects, or also to those in which the defendant alone is such ?

The defendant being a British-born subject, the question of the validity of the alleged contract must, we think, be governed by English law as in force here ; and, under the fourth section of the Statute of Frauds, it was necessary that the promise of the defendant to pay the debt of MacFarland, his brother-in-law, should have been in writing.

NOTE.—A Hindu defendant cannot rely on the Statute of Frauds, though the plaintiff is a British-born subject : *Borrowdale v. Chainsook Buryram*, 1 Ind. Jur. 71. That Statute [29 Car. II. c. 3] was introduced into India under the Charter of 1726.

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