determined by order of the Court executing the decree, and not by separate suit, *and the order passed by the Court shall be open to appeal.*"

1862. *September* 8. *Civ. P. No.* 284 *of* 1862.

Mayne for the respondent Cæmmerer.

PER CURIAM :—As the official assignee was not a party to the suit, section 11 of Act XXIII of 1861, on which he relies, does not apply ; and there is no appeal from the order passed by the Civil Judge in this matter (*a*).

ORIGINAL JURISDICTION. (*b*)

ÁLVÁR CHETTI and others *against* VAIDILINGA CHETTI.

Act XIV of 1840 does not apply to contracts between Hindus.

By Hindu law a purchaser may recover in an action for breach of a contract to deliver goods not only double the earnest money, but also damages for the non-delivery.

1862. *Sept.* 12, 15, 16 & 17.

THIS was an action for the non-delivery of twenty-six bales of twist pursuant to five contracts which had been entered into between the plaintiffs, who were partners, and one Egámbara Chetti deceased, of whom the defendant was executor. All the parties were Hindus.

On the 16th November 1860, Kesavalu Chetti, one of the plaintiffs, entered into three verbal contracts with the deceased for the purchase in all of fifteen bales of grey twist, five of which were to be at rupees 3-5-0 per bundle, and ten at rupees 3-5-6 per bundle. Five were to arrive by the *Bolden Lawn*, five by the *Sir Robert Sale*, and five by the *Trafalgar*. Kesavalu paid five rupees earnest in respect of these fifteen bales.

On the 23rd November 1860, Kesavalu entered into two verbal contracts with the deceased for the purchase in all of twelve bales of Turkey-red twist, at rupees 15-13-0 per double bundle. Six were to arrive by the *General Caulfield*, and six by the *Warren Hastings*. Kesavalu paid five rupees earnest in respect of these twelve bales.

(*a*) *Ex Relatione* Mr. Mayne.

(*b*) Present Scotland C. J. and Bittleston J.

1862. Sept. 12, 15, 16 & 17.

The plaintiffs received one bale of the grey twist that had arrived by the *Sir Robert Sale*, for which they paid rupees 350. But though the other vessels arrived, and the rest of the bales were demanded, the defendant had failed to deliver them pursuant to the contracts. At the times of such failure, the grey twist had risen above, but the red twist had fallen below, the contract-price.

The Advocate General for the plaintiffs.

Branson and *Arthur Branson* for the defendant.

First, the contracts should have been in writing, as Act XIV of 1840, which extends to the territories of the East India Company the Statute 9 Geo. IV. c. 14, was, as part of the law of evidence, part of the *lex fori*, and as such binding on Hindus. The earnest cannot help the plaintiffs, for there must be earnest in respect of each bargain, which is not the case here. There cannot be one earnest for several contracts. Otherwise their might be one earnest for all the contracts entered into during a series of years.

Secondly, if the Court hold the contract binding, the vendee is only entitled by way of damages to twice the amount of the earnest : 1 Strange's *Hindu Law*, 303 : T. L. Strange's *Manual of Hindu Law*, p. 75.

SCOTLAND, C. J. :—The Indian Act XIV of 1840 expressly declares that it shall not be construed to affect any case which would have not been governed by the law of England if that Act had not passed. It is clear that the law and usages of Hindus must regulate all matters of contract between Hindus. And it is equally clear that according to Hindu law a written contract is not necessary. The Act therefore has no application as between Hindus. It is said that though that may be so as to the essentials of a contract, yet that the Act must be taken as part of the *lex fori* and therefore applicable. The answer is that the Act affects the contract itself and not merely the remedy. It enacts that "no contract shall be allowed to be good." The contract itself is made void. Upon the somewhat novel point taken by Mr. Branson—that if the Act applies, the payment of earnest does not help the plaintiffs, because, as he contends, there must be earnest paid in respect of each separate contract, and not one sum for earnest on several contracts,—it becomes unnecessary to give any opinion.

1852. Sept. 12, 15, 16 & 17.

Another point taken was that according to the Hindu law the plaintiff could not recover more than double the earnest-money; and for this reference was made to Sir Thomas Strange's *Hindu Law*, p. 303, and also to Mr. Justice Strange's *Manual*, p. 75, where we find "should it (scil. the breach of contract) be on the part of the seller, he is liable to repay the earnest-money two-fold." We think that this does not preclude a purchaser from recovering damages where he proves that he has substained damages. It merely means that at all events the purchaser shall be entitled to a return of double the amount of the earnest-money.

The plaintiffs then are entitled as damages for the non-delivery of the grey twist, to the difference between the contract-price, and the market-price at the time delivery ought to have been made—that is, according to our calculation:

Per *Bolden Lawn*.....	Rs.	156	4 0
Sir Robert Sale	„	62	8 0
Trafalgar.....	„	46	14 0
	Rs.	265	10 0

As to the red twist, the subject of the fourth and fifth counts, we think the plaintiff cannot be said to have sustained any damage; for those goods appear at the time of the failure to deliver them to have fallen below the contract-price. We therefore can find only nominal damages on those counts; but adopting the Hindu law here where no actual damage is proved, we think that on those counts the plaintiffs are entitled to ten rupees, double the earnest-money on the contract for the red twist. The verdict will accordingly be for the plaintiffs—damages rupees 275-10-0.

BITTLESTON, J. concurred.

The Advocate General asked the Court to certify for costs.

SCOTLAND, C. J. :—Yes, we think that this was a proper case for trial in this Court.

Judgment for the plaintiffs for rupees 275-10-0.