

ORIGINAL JURISDICTION (a)

Special Case No. 52.

W. KUPPU CHETTI v. C. CHIDAMBARA MUDALI.

In an action for damages on account of defendant's refusal to take delivery of goods of the value Rs. 3,699-6-8, sold to him by plaintiff which goods were afterwards re-sold at a loss of Rs. 344-5-9.

Held, that the Court of Small Causes had jurisdiction notwithstanding that the original contract was for more than Rs. 1,000.

1866.
March 2.

THIS was a case referred for the opinion of the High Court, by the Second Judge of the Court of Small Causes at Madras.

The following was the case as stated.

"The plaintiff sued the defendant to recover Rupees 344-5-9.

The following are the particulars of demand, as set forth in the amended summons—the amendments appearing in italics:—

"*Rupees 344-5-9 due by defendant to plaintiff as per particulars following. Being the loss sustained by plaintiff on account of defendant's neglect and refusal to take delivery of 16 cases of yellow sheeting sold by plaintiff to defendant on 13th July 1865, and which 16 cases of sheeting were sold by auction at his risk after due notice to defendant.*

"To value of 77 cwts. 2 qrs. and 14 lbs. or candies 17,
"and 196 lbs. of yellow sheeting, at 210 Rupees per candy,
"sold to defendant on the 13th July 1865, payable on
"the 17th July 1865 Rupees 3,652 5 2

"To Godown rent 12 11 2

"To Bandy hire 2 0 0

"To balance of interest to 30th Sep-

"tember, at 12 per cent. 22 2 4

"To Law charges and Postages ... 10 4 0

3,699 6 8

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

1866.
March 2.

entitled to do so. And by Section 39 of Act IX of 1850, he may set off a cross claim, though it exceeds Rupees 500. But this is an action for damages; and it is the only action which the plaintiff could bring. The plaintiff was certainly at liberty to re-sell the goods upon the defendant's refusal to take them; and, after the re-sale by him, he could not sue for the price. His only claim was for the loss on the re-sale. *Lamond v. Davall*, 9. Q. B. 1030. The amount of that loss was only Rupees 344-5-9, and clearly therefore, in our opinion, the Court of Small Causes had jurisdiction.

ORIGINAL JURISDICTION (a)

Original Suit No. 321 of 1865.

AGAR CHAND *against* P. VIRARÁGHAVALU CHETTI.

In a suit for money due on 3 promissory notes, two of them executed by defendant and one T. in favor of plaintiff, the third by defendant alone, the defence was that the plaintiff agreed to give up the three notes sued upon and to take in lieu thereof a single note, signed by T. while a Petitioner in Insolvency, in favor of defendant, and by defendant endorsed to plaintiff.

Held, that, as the consideration for the making of that note by T. was the defendant's withdrawing his opposition in the Insolvent Court, that that arrangement was brought about by plaintiff, to secure to himself and defendant an undue share of the Insolvent's property, and was an arrangement contrary to the policy of the Insolvent Act and therefore void.

1866.
February 23.
O. S. No. 321
of 1865.

THE plaintiff claimed Rupees 2,476-2-0, principal and interest on three promissory notes. The first dated 29th October 1862, executed by the defendant and one William Dudley Taylor in favor of the plaintiff. The second dated 11th November 1862, executed by the defendant alone. The third dated 23rd December 1862, executed by defendant and the said William Dudley Taylor. Taylor had obtained the benefit of the Insolvent Act on the 19th December 1863. The defendant pleaded that he signed as surety only and that plaintiff had agreed to take a note for Rupees 3,000, which had been signed by Taylor, after he had petitioned the Insolvent Court, in favor of the defendant and endorsed by him to the plaintiff, in lieu of the three notes sued upon.

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