

**Appellate Jurisdiction. (a)***Referred Case No. 4 of 1869.*VENKATA SUBBA ROW *against* SESA REDDY.

Madras Act VIII of 1865, Section 6, imposes upon village kurnums the duty of signing and registering puttahs and moochilkas exchanged under the Act. Where such puttahs and moochilkas were not signed or registered by the kurnum,

*Held* that a suit for rent may be maintained, founded upon the moochilka, the signature and registration by the kurnum not being intended to be a condition of the right to sue.

**T**HIS was a case referred for the opinion of the High Court by Ameruddin Sheriff, the District Munsif of Proddatur. 1869.  
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The case stated that the plaintiff sued for the recovery of Rupees 8, being two years' rent of certain land due on a moochilka.

The document was formally drawn up in the terms required by Section 3, Madras Act VIII of 1865, but it was not signed, and was not registered by a kurnum under the provisions of Section 6 of the Act.

The Munsif was of opinion that registration by the kurnum is optional and not compulsory, but he referred for the decision of the High Court the following questions.—

I. Whether the registry and signature by the village kurnum of puttahs and moochilkas as provided for in Section 6 of Madras Act VIII of 1865 were optional or compulsory?

II. If compulsory, whether only the Collectors, when trying summary suits, or the ordinary Courts also, are prohibited from acting upon such puttahs and moochilkas not signed and not registered by kurnums.

III. If the ordinary Courts also are prohibited from acting upon such documents, what is the procedure for kurnums or parties to obtain registry and signatures when kurnums refuse to do so or when they are absent from the station, and what is the remedy now open for landholders to recover from the cultivators the rent of the years mentioned in such unregistered moochilkas.

IV. Does any appeal lie to the High Court against the orders of a Court of Small Causes declining to make a

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reference under Section, 22, Act XI of 1865, and which of the two words "may" and "shall" mentioned in that Section is applicable to District Munsifs.

The Court delivered the following

JUDGMENT:—In this case we understand the fact to be that the moochilka sued on was given in exchange for a puttah as required by Sections 3 and 4 of Madras Act VIII of 1865. If that be so, we are of opinion that the suit is maintainable under Section 7 of the Act. We think that Section 6 was intended to impose upon kurnums the duty of signing and registering, but no more. Had it been intended to be a condition of the right to sue, it would have been expressly so provided in Section 7, and a provision made for compelling registration. It is not necessary to answer question 2, and question 3 is not a question which arose in the trial of the suit, and therefore ought not to have been referred.

### Appellate Jurisdiction. (a)

*Referred Case No. 31 of 1868.*

KRISTNA ROW *alias* MUTTUKISTNA ROW *against*  
H. F. MUTTUKISTNA, ESQUIRE.

Taking it that the rule of English Law, that the relation of Counsel or Advocate and Client creates the mutual incapacity to make a binding contract of hiring and service either express or implied, governs the relation of Advocate and Client generally in this country, there must be the relation of Advocate and Client to give rise to the incapacity, and the incapacity is strictly confined to contracts relating to service as an Advocate in litigation and matters ancillary to such service.

The degree of Barrister is but one of the qualifications for admission and enrolment as an Advocate of the High Court.

Where the defendant, a Barrister who was not admitted an Advocate of the High Court, or specially authorised to plead in the Session Court, accepted a vakalutnamah from the plaintiff to defend him upon a charge pending in the Session Court, and the defendant failed to appear on the day to which the trial of the plaintiff was adjourned, and the plaintiff sued the defendant to recover the amount of the fee paid,

*Held* that the suit was maintainable.

1869.  
March 1.  
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of 1868.

THIS was a case referred for the opinion of the High Court by J. R. Daniel, Acting Judge of the Court of Small Causes of Madura, in Suit No. 1161 of 1868.

(a) Present: Scotland C. J. and Collett, J.