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January 4.
S. A. No. 151
of 1868.

violation of or forbidden by the law, and clearly an incestuous intercourse is of this nature. Upon this ground we think that we are justified in concurring in the judgment of the Principal Sadr Amin that though in point of fact the 3rd plaintiff in this suit is the illegitimate son of the 4th defendant by the 4th plaintiff, yet as intercourse between a father-in-law and his daughter-in-law is clearly forbidden and incestuous, the 3rd plaintiff is not entitled to participate with the other defendants, the legitimate sons of the 4th defendant, in the family property.

We therefore confirm the decrees below and dismiss this special appeal with costs.

Appellate Jurisdiction (a)

Referred Case No. 39 of 1868.

LAKSHMANAIYAN *against* SIVASAMY ROW.

Where a writing signed by the defendant was in these terms, "S. (defendant) holds Rupees 475 which sum is the property of L, (the plaintiff).

Held, that the document could not be considered a written contract or engagement.

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THIS was a case referred for the opinion of the High Court by A. Annasawmy, the Acting Principal Sadr Amin of Tanjore, in Small Cause No. 350 of 1868.

The plaintiff brought this suit on the 29th August 1868 to recover a sum of rupees 200 due by defendant under a written document (marked as exhibit A, dated the 24th October 1864), which was in the following terms :—

" 24th October 1864, Sivasawmy (defendant) holds
 " rupees 475 which sum of four hundred and seventy-five
 " rupees is the property of Lutchmanien (plaintiff.)

(Signed) " SIVASAWMY."

The defendant pleaded that the claim was barred under Clause 9, Section 1 of Act XIV of 1859, inasmuch as the document sued upon could not be regarded as a written contract."

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

The Principal Sadr Amin was of opinion that the document was not a written contract, in the terms of the latter part of the Section relied on, inasmuch as it contained no engagement to pay the money lent or contract to be bound thereby; but he referred the following question to the High Court:—

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Whether the document A as it stands can be considered as a written contract or not?

Snell for the defendant.

The Court delivered the following

JUDGMENT:—The question submitted is whether the document A can be taken to be a written contract, or in other words, whether it expresses a perfect contract. The document runs thus:—"S holds 475 rupees, which sum is the property of L;" that is to say, by this writing S, the defendant, acknowledges that he has property of L, the plaintiff, worth so much. To that extent therefore it evidences that the defendant is in the relation of depositary or trustee to the plaintiff, but the writing expresses no object matter; nothing in the nature of a promise undertaking or engagement without which there can be no contract. The document may be abundant evidence from which the law would imply a promise, but to get in the promise resort must be had to the implication of law, from the acknowledged tie or relation. It is not expressed in writing. We are therefore of opinion that the document A cannot be considered a written contract or engagement.