

## Appellate Jurisdiction (a)

*Regular Appeal No. 6 of 1867.*

SUBRA'YA PILLAI..... *Appellant.*

SUBRA'YA MUDALI, and 3 others..... *Respondents.*

The plaintiff, a resident of Pondicherry, held a bond from one of the defendants (the 2nd) for a certain sum of money. This bond the plaintiff charged the said defendant before the French legal authorities with having fraudulently abstracted from his house in Pondicherry and he obtained the arrest and extradition from British Territory of the 2nd defendant, as also of his brother the 1st defendant. The latter on his way to Pondicherry met the plaintiff, and a settlement of accounts took place. The 5th, 6th, 7th and 8th defendants made themselves liable by executing the bond sued on for the sum found due to the plaintiff, and took indemnity bonds to themselves from the 1st defendant, the consideration being the agreement of the plaintiff to discontinue further proceedings on the criminal charge. The Court at Pondicherry sanctioned the agreement as a compromise by Civil redress, and suspended further proceedings in accordance with the law in force in the settlement.

*Held*, that the contract was enforceable, the facts of the case not showing the compromise to be in its nature prejudicial as being in contravention of public policy under the Government of British India, or injurious to the good order and interests of society in regard to the administration of public justice.

The English Common Law rule, that contracts for the compounding or suppression of criminal charges for offences of a public nature are illegal and void, has no application to a contract for compounding the prosecution of criminal proceedings for an offence against the Municipal law of a foreign country.

The rule of International law that the law of the place of a contract governs its validity is subject to the qualification that every state may refuse to enforce a contract when it is for the fraudulent evasion of its laws, or is injurious to its public institutions or interests.

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**T**HIS was a Regular Appeal from the Decree of George Ellis, the Civil Judge of Cuddalore, in Original Suit No. 9 of 1864.

*Srinivása Cháriyár* for the appellant, the plaintiff.

*Vencatapathi Ráu* and *Parthasarathi Aiyangár* for the 1st respondent, the 5th defendant.

The facts are fully set forth in the following

**JUDGMENT** :—This is a suit to recover the amount due to the plaintiff (the appellant) on a bond executed by the respondents (the 5th, 6th, 7th and 8th defendants). The

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only plea which it is material to notice here is that of the 6th, 7th and 8th defendants. They aver that the bond was one of two given at the 1st defendant's request for a balance found to be due by him and his brother the 2nd defendant, in order to pacify the plaintiff in respect of a charge of fraud brought in the French Court at Pondicherry against the 1st defendant, upon which the latter had at the time been arrested under authority from the Court. The 1st, 2nd, 3rd and 4th defendants appear to have been joined in the suit, because the 1st defendant gave two indemnity bonds for the same amounts to the respondents, and the others were his brothers. As against these defendants the Civil Judge held that no liability had been shewn, and that decision is not objected to. As respects the respondents, the dismissal of the suit has been decreed on the ground that the consideration for the bond was proved to be the compromise of a charge of theft, and therefore illegal and void.

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The material facts deducible from the recorded oral evidence and the unquestioned official copies of the correspondence between His Excellency the Governor of Pondicherry and the Collector of South Arcot, obtained and put in evidence during the argument of the appeal, appear to be these :—The plaintiff, a resident of Pondicherry, held a bond of the 2nd defendant for Rupees 10,223-7-5 due on transactions in indigo between the plaintiff and the 1st and 2nd defendants. This bond the plaintiff charged the 2nd defendant before the French legal authorities with having in May 1862 fraudulently abstracted from his house in Pondicherry by means of a false key, and thereupon in September of the same year obtained through legal process the 2nd defendant's arrest in, and extradition from, British Territory. In the same month the plaintiff also applied for and obtained the arrest and extradition of the 1st defendant, on the charge apparently of complicity in his brother's offence. On the way to Pondicherry to answer the charge and when at his village (but apparently at the time in British Territory, though this is left somewhat in doubt), the 1st defendant was met by the plaintiff and the respondents, and on a settlement of accounts the

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sum due to the plaintiff was ascertained to be Rupees 19,200, of which the plaintiff waved off Rupees 200. For the balance the respondents made themselves liable by executing the bond sued on and another for Rupees 3,000 and odd, and took from the 1st defendant two indemnity bonds to themselves for the same amounts, the consideration being the agreement of the plaintiff to discontinue further proceedings on the criminal charge. This arrangement was forthwith submitted for the consideration of the Court at Pondicherry and sanctioned as a compromise of the offence by Civil redress, and by its order further proceedings on the charge were suspended, in accordance admittedly with the provisions of the French law in force within the settlement.

On these facts we are of opinion that the decision and decree of the Lower Court are not maintainable ; contracts for the compounding or suppression of criminal charges for offences of a public nature are illegal and void by a rule of the common law of England, which rests on the principle that contracts of that kind are manifestly opposed to public policy and mischievous to the interests of the State, and so long as there is no legislative provision recognising such transactions within strictly prescribed limits, the soundness and expediency of the rule seems unquestionable. We think too that, if closely governed by the principle, the rule is fitly and justly applicable to contracts between Natives of this country in perfect consistency with their own peculiar civil laws and customs. Indeed the penal law of the country (Sections 213 and 214 of the Penal Code) makes it a crime to enter into agreements to conceal an offence, or to screen or abstain from proceedings against an offender, subject to an exception which appears to have been framed with reference to the same principle. A contract, therefore, for the compounding or suppression of a crime of a public nature, like that in the present case, committed within the Territory of British India would, we do not doubt, be held invalid on both the grounds of its being contrary to public policy and *malum prohibitum* by legislative enactment.

But it is clear to us that the Common Law Rule can have no application to a contract for compounding the prosecution of criminal proceedings for an offence against the Municipal law of a Foreign country and committed there, the law of that country permitting such a transaction; and this whether the contract is entered into there or in British Territory. The rule of International law, that the law of the place of a contract governs its validity, is no doubt subject to the qualification that every State may refuse to enforce a contract when it is for the fraudulent evasion of its laws, or injurious to its public institutions or interests. See *Story on the Conflict of Laws, Sections 244 to 259. Wheaton's Inter: Law, 179.* And the suit in the present case would not be maintainable though the bond was executed in the French Territory, if the facts in evidence brought the transaction of compromise clearly within the principle of the Common Law Rule.

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In whichever Territory, then, the contract was entered into, the essential question is substantially the same, namely whether the compromise was in its nature prejudicial, as being in contravention of public policy under the Government of British India, or injurious to the good order and interests of society in regard to the due administration of public justice, or otherwise. And that we are of opinion is not in any degree shewn by the facts of this case. The bond, therefore, not being contrary to our law, or the rule of public policy, is enforceable. Mr. Wheaton, in the note at page 180 of his work, refers to an American decision in the case of *Kentucky v. Bassford* which appears to be very much in point. There a contract relating to lotteries which were authorised by the law of Kentucky, but were illegal in New York, was enforced in New York, the Court laying down the qualification that an obligation to carry into effect a foreign law sanctioning what was plainly contrary to morality would not be enforced.

For these reasons our judgment is that the plaintiff is entitled to recover, and the decree of the Civil Court must be reversed, and as it has been admitted all through that the principal sum of 10,000 Rupees remains due, the decree of this Court will be for payment of that sum, and the

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interest at the rate stipulated in the bond, calculated to the date of this decree, and payment of further interest on the amount of the debt and costs at the rate of six per cent. per annum until the whole is discharged. The appellant and respondents will respectively bear his and their own costs in the Court below, but the respondents must pay the appellant's costs in this Court.

*Appeal allowed.*

## Appellate Jurisdiction (a)

*Criminal Petition No. 224 of 1867.*

KA'DAR RAVUTTAN, and }  
 AYANGANA RAVUTTAN... } *Appellants. (Prisoners.)*

To constitute the offence of false personation under Section 205 of the Penal Code it is not enough to shew the assumption of a fictitious name ; it must also appear that the assumed name was used as a means of falsely representing some other individual.

*Reg. v. Bhitto Kuhar* (1 Indian Jurist 123,) dissented from.

1868.  
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C. P. No. 224  
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THIS was a petition against the sentence of F. S. Child, the Session Judge of Tinnevely, in case No. 155 of the Calendar for 1867. In this case the 1st prisoner was convicted of false personation in a judicial proceeding under Section 205 of the Indian Penal Code, and of giving false evidence under Section 193, and he was sentenced to seven years' rigorous imprisonment. The 2nd prisoner was convicted of abetting the commission of the offence of false personation by the 1st prisoner and was sentenced to three years' rigorous imprisonment.

The prisoners appealed.

*Mayne* and *Branson* for the prisoners.

The Court delivered the following

JUDGMENT:—The record in this case was called for in order that the Court might determine the objection taken to the validity of the conviction of the 1st prisoner on the first charge, and of the 2nd prisoner on the third charge. We are now clearly of opinion that both are bad.

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