

Appellate Jurisdiction. (a)*Referred Case No. 30 of 1869.*Y. VENKATACHALAM *against* MALA KASIGADU.

The period of limitation applicable to suits upon written instruments which might have been registered by virtue of any law in force at the time of their creation, but which have not been registered, is three years.

1869.
October 27.
R. C. No. 30
of 1869.

THIS was a case referred for the opinion of the High Court by P. Aiyavaiyer, the Acting District Munsif of Nundialampett, in Suit No. 443 of 1869.

The following was the case stated.

This is a suit for the recovery of Rupees 29-11-5 upon a bond dated 3rd Bahoola of Aushada in the year Krodhana, corresponding to the 11th July 1865, evidencing a loan of Rupees 8 and of a certain quantity of ragee, stipulating to repay the same within the month of February 1866. And this suit is brought after a lapse of more than three years from the time the cause of action arose in this case.

This case came on for hearing before me on the 26th instant, and I dismissed it under Clause 10, Section 1, Act XIV of 1859, contingent upon the opinion of the High Court, the bond in question not having been registered, though registrable under Section 16, Act XVI of 1864.

3. But the Vakil for the plaintiff pleads that under the ruling of the High Court in Regular Appeal No. 24 of 1865, (page 401, Volume 2, M. H. Court Reports), among other things vaguely pleaded, the period applicable to this is six years.

4. And I think that the phrase "where there is no legal obligation to register the instrument" which appears in the heading of that judgment, leads him to think so. And I see many similar suits have been filed in this Court. But this practice, I think, may have arisen from the force of the expression "legal obligation" used in the above phrase, there being no legal obligation under Section 16, Act XVI of 1864 to register the instrument falling under that Section, and no other section of the Registration Act being applicable to a case of this nature.

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

But I find in the body of the judgment above referred to, no such expression has been used, even at least impliedly. Therefore I am of opinion that the argument, advanced by the plaintiff's pleader is untenable.

1869.
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B. C. No. 30
of 1869.

I also beg to submit herewith a copy of the application put in by the plaintiff's pleader in this case at his request.

Therefore the question submitted for the decision of the High Court is whether the phrase "legal obligation" used in the heading of the judgment in Regular Appeal No. 24 of 1865 of High Court published at page 401 of Volume 2, is in conformity to the force of that judgment, or whether the period applicable to a case based upon a bond evidencing loan of money when the registration of an instrument is discretionary, but not obligatory in law, is three years under Clause 10 or six years under Clause 16, Section 1, Act XIV of 1859.

No counsel were instructed.

The Court delivered the following

JUDGMENT:—The ground of the decision in the case* referred to by the District Munsif of 1865 (II, H. C. Reports, No. 401.) plainly is that the limitation of 3 years provided for in Clause 10, Section 1. of the Limitation Act applies to suits on written instruments which could have been registered by virtue of any law in force at the time of their creation. In the present case the written instrument might have been registered, and, not having been registered, the period of limitation applicable to the suit is 3 years.