

(1894) 01 MAD CK 0001
In the Madras High Court

Palaniappa Chetti and Another

APPELLANT

Vs

Periakaruppan Chetti

RESPONDENT

Date of Decision : 18-01-1894

Acts Referred:

Citation : (1894) ILR (Mad) 262

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

1. We agree with the Judge that the document is not an account stated, but a promissory note or bond. The balance acknowledged to be due upon

the memorandum of interest is referred to therein only as the consideration for the promise to pay it with interest within twelve months after date. It

is the *lex loci contractus* that determines, the validity of a contract made in a foreign state. The document being executed in the Pudukottai territory,

and no bond or promissory note being, according to the law of that state, operative for the purpose of creating any legal right unless it is registered,

the suit cannot be supported as an action on the document.

2. The only other question which arises for decision is whether the decree can be supported by treating the suit as one brought upon the

consideration for the document. It is not necessary to decide for our present purpose whether it is a bond or promissory note. In either case it is

not, in the absence of registration, a source of legal right according to the law of Pudukottai. We are of opinion that the question whether a

judgment may be given for respondent, upon the consideration for the document, is one of procedure governed by the *lex fori*. Though the account

stated is mentioned in the plaint, it is mentioned as part of the transaction

evidenced by the document and not as a distinct ground of claim, the date on which the cause of action arose being described as the date mentioned for payment in the document. But it is argued that a judgment may be given upon the consideration, though the plaint does not refer to it as a distinct count or as an additional ground of claim, and though no issue was taken in regard to it.

3. According to English practice, a common count upon the consideration and special count on the bill are inserted in the declaration; but in India we are not governed by technical rules of pleadings. It is, however, necessary that it should be either stated in the plaint as an independent ground of claim or treated as such and an issue taken at the first hearing.

4. As the plaintiff did neither in this case, the decree could not be supported as a decree upon the case disclosed by the plaint or as amended by the issues on which the parties proceeded to trial. This view is in accordance with the decision in *Valiappa v. Mahommed Khasim* ILR 5 Mad.

166 We allow the appeal, and, setting aside the decrees of the Courts below, direct that the suit be dismissed.

5. Under the circumstances of this case we order that each party do bear his costs throughout.