

itance, purchase, partition, seizure, or finding: Miták., Ch. II., Sec. XI., para. 2; and "that which was given to her by her kindred; as well as her fee or gratuity or anything bestowed after marriage; what is given to a damsel by her kindred, by the relations of her mother or those of her father; the gratuity for the receipt of which a girl is given in marriage; what is bestowed or given after marriage or subsequently to the nuptials:" Miták., Ch. II., Sec. XI., para. 6; Mayúkha, Ch. IV., Sec. X., paras. 2 and 3; and also "what has been received by a woman from the family of her husband at a time posterior to her marriage is called a gift subsequent, and so is that which is similarly received from the family of her father. It is celebrated as woman's property:" Miták., Ch. IV., Sec. XI., para. 7. But not property given to a woman with a view to cheating the heirs, or by persons who are strangers in blood to her and to her husband: Mayúkha, Ch. IV., Sec. X., paras. 6 and 7.

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GIBBS, J., concurred.

Referred Case.

June 26.

TRIKAM DA'MODHAR *Plaintiff.*
 LA'LA' AMI'RCHAND *Defendant.*

Wagering Contract—Promissory Note given in payment of Loss on Wagering Contract—Consideration—Act XXI. of 1848—Bombay Act III. of 1865.

A promissory note which has for its consideration a debt due on a wagering contract is not binding in the hands of the original payee.

THE following question was referred for the decision of the High Court by Gopálráv Hari Deshmukh, Judge of the Court of Small Causes at Ahmedábád, under Sec. 22 of Act XI. of 1865:—

"Is a promissory note which had for its consideration a debt due on account of a wagering contract binding?"

"The plaintiff has sued the defendant on a promissory note. The defendant pleaded that the promissory note, though apparently for cash received, was in fact for a debt due on a wagering contract called "*vaída*." It is satisfac-

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torily proved by evidence adduced by him that it was executed for a sum of money which had become due in consequence of a wagering contract entered into before Bombay Act III. of 1865 came into force.

“ My opinion is that the note is not binding.”

The case came before WESTROPP, C.J., and GIBBS, J.

WESTROPP, C.J. :—The promissory note (dated 17th January 1865) for Rs. 360, payable by instalments, was executed by the defendant in favour of the plaintiff before Bombay Act III. of 1865 came into force, and the Judge has found that the defendant has satisfactorily proved that the note was given by the defendant to the plaintiff in respect of a contract by way of wagering or gaming.

We do not think that the fact that the wagering contract and the note were both antecedent to the coming into force of Bombay Act III. of 1865 affects the question.

The wagering contract itself being, under Act XXI. of 1848, null and void, the promissory note must be regarded as made without consideration. A contract which is itself null and void cannot be treated as a valid one, or any consideration for a promissory note. Accordingly, between the original parties to the note it cannot be enforced: Leake on Contracts, p. 378; nor can it be enforced even by an indorsee of the note against the maker of it, if the indorsee did not give value for it. But the burden of proving that the indorsee did not give consideration for it lies upon the maker: *Fitch v. Jones (a)*. In the present case, however, the action is between the original parties, namely, payee against maker, not indorsee against maker; and the maker has proved that the note has been given in respect of a gambling transaction, and, therefore, that it is without consideration as between him and the plaintiff.

The reply to the Judge's question must, therefore, be in the negative, namely, that the note is not binding as between the plaintiff and the defendant, and, therefore, that the present action cannot be sustained.

(a) 5 El. & B. 238; S. C. 24 L. J., Q. B. 293.