

[APPELLATE CIVIL JURISDICTION.]

1875.
March 10.

Regular Appeal No. 73 of 1872.

PA'RAKH GOVARDHANBHA'I HARIBHA'I
and LALLU HARIBHA'I, owners of
the firm of GOVARDHANBHA'I LAL-
LUBHA'I } *Plaintiffs and*
Appellants.

RANSORDA'S DULABHDHA'S, owner of
the shop (or firm) conducted
in the name of SHA' NATHUBHA'I
RANSORD } *Defendant and*
Respondent.

*Act XXI. of 1848—Bombay Act III. of 1865—Hindu Law—Wagering
contracts—Agency—Partnership.*

Act XXI. of 1848 simply annuls all contracts by way of wagering, and prohibits any suit in respect of them, but does not declare them to be unlawful; and neither by the provisions of Act XXI. of 1848 nor by Hindu law is the agent of a wagerer precluded from maintaining against the latter a suit for moneys paid by the agent to the other wagerer, or his agent, in respect of the loss of the wager, nor from recovering fees and brokerage due to him as agent in effecting, or for services in connection with, the wagering transaction. *Moteelal Heeralal v. Jumnadas Umrootlal and another* (2 Borr. Rep. 676) overruled.

Bombay Act III. of 1865 has not a retrospective force, and, therefore, applies neither to agreements collateral to wagering contracts, entered into prior to its coming into operation, nor to interest subsequently accruing due on such agreements.

Where the parties to an agreement (prior to the coming into force of Bombay Act III. of 1865), collateral to a wagering transaction, stand to each other in the relationship of partners, and not merely of principal and agent, they are severally liable for contributions, proportionate to their several shares, towards the losses incurred by the partnership in respect of such wagering transaction.

THIS was an appeal from the decision of Bholánáth Sára-
bhái, First Class Subordinate Judge of Ahmedabad, in
original suit No. 742 of 1867.

The facts of the case fully appear from the judgment of
the Court.

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The appeal was argued before WESTROPP, C.J., and KEM-

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DULABHDA'S.*Leith* (with him *Shántarám Náráyan* and *Vináyak Hari-
chand*) for the appellants.*Starling* (with him *Dhirajlál Mathurádás*, Government
Pleader,) for the respondent.*Cur. adv. vult.*

WESTROPP, C.J. :—The plaintiffs claim from the defendant, as sole member of the firm of Shá Nathubháí Ransordás, a balance of Rs. 15,699-8-5, alleged to be due in respect of various dealings in cotton, opium, &c., between the plaintiffs and that firm.

With the single and insignificant exception of an item of "Rs. 59-1-0 debited on account of insurance," the defendant denies that any of the transactions sued upon were with the firm of Shá Nathubháí Ransordás. That firm he alleges to consist of several partners, none of whom, except the defendant, have been made parties to the suit. Any dealings, other than the item of Rs. 59-1-0, which the defendant had with the plaintiffs, he alleges to have been *Sattá* transactions, i.e., time-bargains, falling within Act XXI. of 1848, and carried on by the plaintiffs not simply as his agents, but as partners with him in his capacity as an individual, and not on behalf of, or with the firm of, Shá Nathubháí Ransordás.

Putting aside the item of Rs. 59-1-0, both parties concur in regarding the defendant alone as the person concerned with the plaintiffs in the transactions, the subject of this suit. The parties, it is true, arrive at that conclusion by different roads, inasmuch as the plaintiffs say that he is so because they dealt with the firm of Shá Nathubháí Ransordás, and that the defendant is the sole member of that firm, whereas the defendant avers that he alone is the person concerned with the plaintiffs in those transactions, inasmuch as they were dealings with the defendant as an individual, and not with his firm of Shá Nathubháí Ransordás.

Whichever of these two reasons be the true one, it is evident that under neither hypothesis would it have been a

proper course to have made the alleged partners of the defendant in the firm of Shá Nathubháí Ransordás parties to this suit in respect of any of the transactions sued upon by the plaintiffs other than the item of Rs. 59-1-0, and for the sake of that item alone we do not understand that the plaintiffs wish to amend their plaint by adding as parties to this suit the persons alleged by the defendant to be his partners in the firm of Shá Nathubháí Ransordás. It would indeed have been imprudent to do so, because if it turned out either that the defendant expressly contracted on his own behalf alone with the plaintiffs in respect of the other items, or that, although he may have professed to enter into those contracts on behalf of the firm of Shá Nathubháí Ransordás, yet the other members of that firm did not authorize him to engage in such transactions, nor did such transactions come within the proper scope of the business for carrying on which the partnership firm of Shá Nathubháí Ransordás was established, the defendant alone would be liable in respect of them, and the plaintiffs would have exposed themselves to payment, to the partners other than the defendant, of their full costs, and could not save themselves therefrom by establishing against them the item of Rs. 59-1-0 inasmuch as it would be a misjoinder to have associated in one and the same suit that item, which affected the firm, with the other items, which, on the present hypothesis, affected only the defendant in his individual capacity. In that case, moreover, the plaintiffs might find it difficult to establish a right to have the costs, which they might be compelled to pay to those partners, over against the defendant; for he has, throughout this suit, denied that the transactions, other than the item of Rs. 59-1-0, were matters to which the firm of Shá Nathubháí Ransordás were privy.

The case of the plaintiffs, as presented to the court below, was that they acted in the transactions, alleged by the defendant to be *Sattá* transactions, as agents, and not as wagerers; that in short the wagers, if the transactions were wagers (which the plaintiffs denied them to be), were wagers between the defendant (under his commercial description or

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1875. style of Shá Nathubháí Ransordás) and third parties, and not between him and the plaintiffs, and consequently that Act XXI. of 1848 did not apply to this suit. To that question of agency the Subordinate Judge mainly directed his attention, and held that such agency was not proved. He also held that the transactions were *Sattá* transactions. Assuming, but not deciding, that he was right on both points, we must point out that the defendant alleged that he did enter into *Sattá* transactions with the plaintiffs, and that the latter were not his agents, but his partners in those transactions, that is to say, were joint wagerers with him in time-bargains with third parties. The Subordinate Judge seems to have quite overlooked the legal effect of the case as thus put by the defendant himself, and so apparently did his professional advisers in the court below. The defendant denied that the plaintiffs were his agents, thinking probably that he might thus evade coming within the scope of the decisions of the Supreme and High Courts, which held that the agent (usually a shroff) of a wagerer might maintain against the latter a suit for moneys paid by the agent to the other wagerer or his agent in respect of the loss of the wager, and might also recover fees and brokerage due to him as agent in effecting, or for services in connexion with, wagering transactions. Such was the case of *Jorávermal Sivlál v. Berámji Dádábhái*, decided, after due consideration, by Sir M. Sausse, C.J., in the Supreme Court, on its Plea Side, on the 14th of April 1859. It was an action of assumpsit to recover Rs. 11,001-8-1, being the balance of an account due from the defendant to the plaintiffs. The items on the debit side of the account consisted of payments, made by the plaintiffs on account of, and for the defendant, in satisfaction of losses on wagers made by the defendant in the names and through the agency of the plaintiffs, and of commission or brokerage due to the plaintiffs as such agents of the defendant. The wagers had been all entered into subsequently to the passing of Act XXI. of 1848, and were upon the average prices of opium realized at the Government sales of that commodity at Calcutta in 1857 and 1858. The commission or brokerage

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was for effecting those wagers. Beside pleas of non-assump-
 sit, payment and fraud (which were traversed by the plaintiffs),
 the defendant pleaded certain special pleas, apparently in-
 tended to show the circumstances, under which the payments
 were made, and the brokerage, &c., sought to be recovered,
 and that, either by Act XXI. of 1848 or by Hindu law, the
 plaintiffs were debarred from recovering those payments or
 the brokerage, &c. To those special pleas the plaintiffs both
 specially and generally demurred. I contended on behalf
 of the plaintiffs that the special pleas were not only bad on
 special demurrer as being informal and unintelligible, but
 also were bad in substance, and, therefore, open to general
 demurrer, because the contracts sued on were not wagering
 contracts, but contracts collateral to them, on which a suit
 would lie, inasmuch as wagering contracts were only annulled
 and not rendered illegal by Act XXI. of 1848. Mr. Lewis,
 A.G., for the defendant contended, 1st, that Act XXI. of 1848
 was applicable to contracts collateral to wagering contracts as
 well as to wagering contracts themselves, and in fact render-
 ed the latter illegal, which, being so, tainted the collateral
 contracts with the same illegality. 2ndly, that, at all events,
 by Hindu law, all wagering contracts were illegal, and for
 this he cited 2 Borradaile 415, 621, 1st Ed. (a). As to the
 special pleas, the Chief Justice said that there were "strong
 reasons for regarding them as bad on special demurrer for
 informality and unintelligibility, but that he would not decide
 the case on that ground." I have a correct manuscript note
 of the judgment made at the time of its delivery, which, as
 the case has not been reported, it may be useful now to
 quote. He said: "Assuming those pleas to be regular in
 form and clear in their meaning, and further assuming that
 meaning to be that which it has been argued to be by the
 defendant's counsel, and viewing them in the manner most
 favourable to the defendant, those pleas seem to me to be
 bad on general demurrer. Treating those pleas either as
 stating that the plaintiffs had paid moneys for the defendant
 to third parties on losses by the defendant in respect of

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(a) 455, 676, Ed. of 1862.

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wagering contracts entered into between him and such third parties, or that the moneys sought to be recovered by the plaintiffs in this action are for commission or brokerage fees in respect of such contracts effected by the plaintiffs for the defendant with third parties, I think that those pleas would be bad on general demurrer. Act XXI. of 1848 of the Indian Legislature is analogous to the English Statute 8 and 9 Vic., C. 109, S. 18, from which the Indian Act is borrowed. That Statute and the Indian Act make all agreements by way of gaming or wagering null and void, and prohibit any suits in respect of such contracts. Neither the Statute nor Act declares such contracts unlawful, but merely annul them. There has been always a distinction preserved between cases, in which the Legislature declares a contract to be unlawful, and cases in which the Legislature has declared a contract to be null and void, and prohibited the parties to it from suing upon it. That distinction has been very clearly upheld with respect to the English Statute 8 and 9 Vic., C. 109, S. 18. Several cases in point have been cited by Mr. Westropp for the plaintiffs. *Knight v. Cambers* (b) and *Knight v. Fitch* (c) appear to rule the present case. *Inchbald v. Cockerell* (d), and *Sims v. Harris* (e), are to the same effect (f)." (Here Sir M. Sausse referred in detail to those cases and then continued thus :) "The case cited by Mr. Lewis, A.G. from 2 Borradaile's Reports 621 (1st Ed.), appears to have been treated both in this Court (g) and in the Privy Council (h) as no longer law, if ever law. The 5th and 6th pleas are applicable to the count in the plaint on the account stated. They seem to be bad for the same reasons as the 3rd and 4th. The demurrer must be allowed with costs as the authorities are quite clear on the subject." The case subsequently went to trial upon the other pleas, on which issues in fact had been

(b) 15 C. B. 562; S. C. 1 Jur. N. S. 525; 24 L. J. N. S. C. P. 121.

(c) 15 C. B. 566; S. C. 1 Jur. N. S. 526; 24 L. J. N. S. C. P. 122.

(d) 4 Jur. N. S. 693, Exch. (e) *Id. Ib.*, 72.

(f) See also *Fitch v. Jones*. 5 E. and B. 238

(g) *Opium cases*, Perry, O. C., 225, 227.

(h) *Dulabdas Pitambardas v. Ramlal Thakursidas*, Perry, O. C., 232; S. C. 5 Moore I. A. 127.

joined, and the plaintiffs, notwithstanding another struggle made for the defendant at the trial, obtained, on the 11th November 1859, a verdict against him for Rs. 11,001-8-1 (the amount claimed) and costs.

The contracts, sued upon in that case and in the analogous cases upon the Stat. 8 and 9 Vic. cited in it, were the contract arising upon either the express or implied request of the principal that the agent should pay the amount of the losses incurred on the wagers for the principal, and the express or implied contract that the principal should remunerate the agent for his services as agent. The contracts sued upon were not the wagering contracts themselves, but contracts collateral to them. It may be gathered from the cases relied on by Sir M. Sausse, from his own decision, and from *Rosewarne v. Billing* (i), *Joseph v. Lutwyche* (j), and other cases, that the fact that a person has constituted another person his agent to enter into and conduct wagering transactions in the name of the latter, but on behalf of the former (the principal), amounts to a request by the principal to the agent to pay the amount of the losses, if any, on those wagering transactions.

The decision in *Jorávermal Sivlál v. Dádábhái Berámji* has been followed in numerous instances in the Supreme and High Courts [of which unfortunately only one, *Tribhuvandás v. Motilál* (k), has been reported], and, except in the case of collateral contracts entered into or arising since Bombay Act III. of 1865 came into force, has never been departed from. The law, as laid down in that case, is still the law in all parts of British India other than the Presidency of Bombay, throughout which Bombay Act III. of 1865 is in operation. The only item in the account (the subject of this suit) of a date subsequent to the coming into force of Bombay Act III. of 1865 is one for interest. The 4th section of that Act expressly declares that the Act "shall not be construed so as to give it a retrospective effect." If, under such contract or usage as the plaintiffs may prove, they would

(i) 15 C. B. N. S. 316.

(j) 10 Exch. 614.

(k) 1 Bom. H. C. Rep. 34.

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have been entitled to interest upon the moneys due to them in respect of the collateral contracts before the Act came into force, they will be so still. To hold that interest upon moneys due on collateral contracts, *entered into or arising before the Act came into force*, ceased to run from its coming into force, would be to give to the Act a retrospective operation. Neither to collateral contracts of such date, nor to any claim for interest arising thereon, is Bombay Act III. of 1865 applicable. That Act was passed to supply the defect which *Jorávermal Sivlál v. Dádábhái Berámji* and other similar cases disclosed in Act XXI. of 1848 (which excluded suits on wagering transactions), and to close the doors of the courts of justice in this Presidency to suits upon contracts collateral to wagering transactions where such collateral contracts have been entered into or have arisen since the Act came into force, a purpose which it has effectually answered, but the Act was never intended to be applicable to prior contracts. Supposing then the plaintiffs to have been only the agents of the defendant, and, as such, to have entered in their own names into the wagering transactions on his behalf, the authorities already quoted show clearly that, notwithstanding that the commission and brokerage were earned in respect of services relating to wagering transactions, this action would lie for that commission and brokerage, and further that, unless the defendant, before the plaintiffs paid losses on those wagering transactions for him, had countermanded their authority as agents, and forbidden them to make such payments, they would be entitled to recover the amount of those payments. Assuming, however, that the plaintiffs were, as the defendant alleges, his partners in the wagering transactions, they would still, nevertheless, be entitled to recover from him his share, at least, of all losses which they have paid for him, unless it can be shown that, before they made such payment, he forbade them to do so. Lord Wensleydale says (6 Ho. of Lords 417); "The law in ordinary partnerships, so far as relates to the powers of one partner to bind the others, is a branch of the law of principal and agent. Each member of a complete

partnership is liable for himself, and, as agent for the rest, binds them upon all contracts made in the course of the ordinary scope of the partnership business." Mr. Lindley (Vol. 1, 743), in discussing the subject of contribution and indemnity between partners, says:—"It is to be observed that every member of an ordinary firm is, to a certain extent, both a principal and an agent. He is liable as a principal to the debts and engagements of the firm, and he is entitled to contribution from his co-partners; for they have no right to throw on him alone the burden of obligations which, *ex hypothesi*, are theirs as much as his. Again, each member, as an agent of the firm, is entitled to be indemnified by the firm against losses and expenses, *boná fide* incurred by him, for the benefit of the firm, whilst pursuing the authority conferred upon him by the agreement entered into between himself and his co-partners."

There was an unreported case (*Aban Shá Sáheb Ali v. Kássiráv Bábá Sáheb Holkar and others*) before Sir Mathew Sausse, C.J., in which the plaintiff filled the character as well of partner as of agent (in the strict sense of that term) with the defendants. The suit was one which had been instituted at the Equity Side of the late Supreme Court, but was decided in the High Court. It may be useful to quote *in extenso* the following note of Sir M. Sausse's judgment:—

"This is a demurrer for want of equity to the plaintiff's bill, which prays for an account of partnership transactions, between the plaintiff and the defendants, in respect of opium time-bargains or contracts which they had mutually agreed to enter into with third parties through the agency of the plaintiff, who also claims, under the partnership agreements, a brokerage or commission upon each of those transactions, as well as interest upon advances made by him for partnership purposes.

"The plaintiff and defendants, having agreed to speculate in opium time-bargains, on the 7th February 1861, entered into the following agreement in writing:—

"To Aban Shá Sáheb Ali (the plaintiff), written by the undersigned. As to bargains for chests of opium by the

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fixed time of 25th February 1861, chests will be sold and will be purchased, and earnest money will be paid and received. Vithaldás Mangalji will cause these bargains to be entered at your place. Do you be pleased to enter the same. For the bargains you may enter, do you be pleased to send notes containing the particulars. 7th February 1861.'

"The plaintiff and the several defendants subscribed for the number of shares attached to their names respectively, and in the following form, which is that adopted by the first defendant:—'In this I have eight annas whether profit or loss be obtained at the rate of eight annas.'

"The plaintiff had one-sixteenth share only. It was orally agreed that he should receive a brokerage or commission of two rupees per chest upon all bargains, and also interest at 9 per cent. upon all advances made by him in payment of differences under the partnership agreement.

"The plaintiff, with the knowledge and consent of the other partners, received from, and paid to, third parties several sums on account of differences. The payments having largely exceeded the receipts, a loss accrued to the partnership, and, when the plaintiff called upon the partners to pay their proportion of the losses which had been paid by him in conformity with the partnership agreement, the defendants refused to contribute. The plaintiff then filed this bill, and the defendants demurred for want of equity. The defences relied upon are: 1stly, that such 'time-bargains' were rendered illegal by the Indian Wagering Act XXI. of 1848; 2ndly, that, by Hindú law, such wagers or time-bargains are illegal.

"In conformity with decisions upon the analogous English Wagering Statute 8 and 9 Vic., C. 106 (from which the Indian Act is almost literally copied), this Court has repeatedly decided that wagers are not rendered illegal by Act XXI. of 1848, and it has so held very recently (*l*) in an

(*l*) On the 10th August 1861. Mr. Anstey then strongly insisted on the illegality, by Hindu Law, of wagering transactions, and cited 2 Borr. 415, 621, Ed. 1st; Bellasis R. 72; Morris, Part III., Sel. Ca. S. D. A., p. 33; and Manu Ch. VIII., pl. 7, and Ch. IX., pl. 221 to 227; but without success. An attempt then made by him to bring the case within the English laws against forestalling, regrating and engrossing, likewise failed.

action brought by the present defendant, Kássiráv Bábá Sáheb Holkar, against Rámlál Thákursidás on the Plea Side of the late Supreme Court, when a defence similar to the present was relied upon by Rámlál.

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“ Legislation, both in England and India, with respect to wagers, is very similar in character to that which took place nearly two centuries ago with respect to other contracts, when the Statute of Frauds (29 Car. II., C. 3), in the 4th and 17th sections, declared that no actions should be brought on certain contracts, and that a certain other class of contracts should not be allowed to be good.

“ Those contracts were never held to be illegal. In the hurry and excitement of commercial activity, they are daily entered into in England, but, although not legally binding upon the contracting parties, they yet form the legitimate subject of partnership dealings and accounts which are there investigated and enforced by courts of law.

“ With a view to the protection of legitimate commerce and honest trading from the evil consequences of this widely spread practice of gambling in India, it might, on the whole, have been better to have declared such wagers to be illegal, and not simply null and void, but that is for the Legislature, the province of courts of justice is to administer law as they find it, and not to make it.

“ The first ground of defence then fails altogether. It has been strongly urged at the Bar that the Privy Council has not yet pronounced any judgment upon the point that wagers are illegal contracts by Hindu law, and that it was, therefore, open to the defendants to rely upon that defence.

“ Although there was no express decision upon that point in the judgment delivered in 1850 by Baron Parke in *Dulabdas v. Ramlal (m)*, yet there was a very strong expression of opinion by the Privy Council that the authorities referred to in the arguments did not support the proposition that wagers or time-bargains were illegal by Hindu law; and in the case of *Raghunath Chotalal v. Manakchand (n)*, which

(m) Perry O. C. 232.

(n) 6 Moore I. A. 251.

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was decided in 1856, this point of illegality was not raised, or adverted to, although it would, if supported, have led to a contrary decision.

“ All the authorities relied upon in the present argument were brought before the late Supreme Court in 1849 in the case of *Ramlal v. Dulabdás*, (o) but there was an unanimous judgment of the Court that wagers were not illegal by Hindu law. It is so far *res judicata*, but, after having examined all the authorities referred to in argument and in the judgment of the Court in that case, together with any other which I have been able to discover, I fully concur in the soundness of that decision, and with the observations of Chief Justice Perry, which are to be found at pp. 227-28.

“ In Halhed's *Gentu Law* (published in 1775) the text of *Yājnyavalkya* is given, by which even a common gaming wager is directed to be enforced by law, if made publicly in a recognised gambling-house ‘and the king's share paid,’ and in the *Mayukha*, Chap. XXI., pl. 2, the author treats Section 224 of Chap. IX. of *Manu* (which has been relied upon in argument for the defendants in support of the demurrer) as declaring the punishment of gambling ‘without the permission of the king.’

“ After such a clear recognition of public gambling-houses, and of gambling debts being recoverable by the aid of the State, it would, in my opinion, be impossible to contend successfully that all wagers are contrary to the spirit of Hindu law, or to immemorial and generally accepted Hindu usage. Indeed, so far as usage is known, it is in favour of the recognition of wagers as a head of legal contract. I entertain no doubt that wagers are not illegal contracts by Hindu law beyond the specific instances in which some descriptions of them were prohibited by a recognised law giver, such as *Manu*, or by the ordinances of a sovereign.

“ The state of Hindu law on this subject appears to have been very analogous to that of British law before the Stat. 8 and 9 Vic., C. 106, until which period wagers generally

(o) Perry O. C. 224.

were lawful contracts, although particular descriptions of them, such as gaming with dice, cards, &c., were rendered illegal by Statute.

“As it was stated in argument that a similar defence was raised in a case now depending before the Judges sitting at the Appellate Side of the Court, and that a question upon the legality of wagers or time-bargains (*Váyadá Vyápár*) has been sent by those Judges to the Hindu law officer for his decision, I have procured both and find his reply to have been that there is no specific provision in the Shástra in respect of such a transaction.

“I refer to it, not as authority upon the subject, but to show that, as far as can be ascertained from Hindu works, either translated or in the vernacular, there is no prohibition to be found against wagers or time-bargains, as a general head of contract.

“The subject-matter of partnership dealings in the present case was not of an illegal character, and, upon the facts stated in the bill, the defendants must abide by their contract with the plaintiff, and contribute their share of the losses incurred as well as pay the stipulated brokerage on the various transactions entered into by him upon their behalf.” Sir M. Sausse then overruled the demurrer with costs.

The Subordinate Judge having overlooked the bearing of the law of partnership upon the admission of the defendant that he had entered into time-bargains in partnership with the plaintiffs, we must (except as presently mentioned) reverse his decree. As there must be a new trial, we do not purpose now to express any opinion whatever upon the questions of fact, viz., 1st, whether the plaintiffs were simply agents, or 2nd, whether they were agents and partners, or 3rd, whether they were partners only of the defendant in the transactions out of which this suit has arisen, or in any one or more of those transactions: All of those questions we leave open for determination by the Subordinate Judge upon the new trial, as well as the amount of the balance or balances (if any)

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due from the defendant to the plaintiffs in any one or more of the three capacities above mentioned. In the investigation of those questions, it will be important that the Subordinate Judge should carefully consider the question as to the genuineness of Exhibits Nos. 26 and 27, or of either of them. In doing so, he may resort to comparison of the handwriting in those documents with that in Exhibits 29 and 31, which are admitted by the defendant to have been written by him. The Subordinate Judge may, if he thinks fit, take the evidence of independent experts as to the handwriting in Exhibits 26 and 27 as compared with the admitted exhibits. The court below may very possibly have been right in deeming the dealings between the plaintiffs and defendant to be *Sattá* transactions or collateral to such transactions, but what has been already said as to the law of this case shows that to be an immaterial question. The Subordinate Judge having held that the defendant failed to prove his cross demand of Rs. 5,019-9-0, or any part thereof, and the defendant not having appealed against that finding, we consider it conclusive upon him. He, therefore, cannot be permitted on the new trial to re-open that question. If his contention be true that the dealings sued upon by the plaintiffs were dealings in partnership between them and himself in his individual capacity, and not with his firm of Shá Nathubháí Ransordás, which he avers to consist of several partners, he could not properly have set up as a counter-claim in this suit the balance of Rs. 5,019-9-0, which he alleges to be due to that firm. Any attempt to establish that claim should be in a suit to which all of the members of that firm were parties.

Except as regards the counter-claim of Rs. 5,019-9-0 set up by the defendant, the Court reverses the decree of the Subordinate Judge of the 28th of January 1871, and remands the cause for a new trial on the merits, at which regard should be had to the observations contained in this judgment, a copy of which accompanies the decree. Costs of this appeal and of the cause are to abide the result of the new trial. The English memorandum of appeal must be amended by rendering its heading conformable to that of the plaint and suit.