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I am fortified in this conclusion by finding that there are elaborate provisions contained in the Order for preparing and sending an appeal record to the High Court (articles 27 to 30) and none for sending up papers under section 622. The intention is that original papers are not to be transmitted to Bombay except in exceptional cases. I am further fortified in it by a comparison of the language of article 9 relating to criminal jurisdiction with that of article 21, and I think that if it had been intended to make the High Court a Court of Revision over the Zanzibar Courts, it would have been done by direct language and not left to be gathered by doubtful implication. Lastly, the jurisdiction of the High Court over the class of suits referred to in article 32 is necessarily restricted by express words, as otherwise it would have under article 21 an appellate jurisdiction in respect of such suits, while it is not necessary to except the application of the provisions of section 622 of the Code from the Order as they relate to powers of the High Court which are not exerciseable in Zanzibar unless extended to it.

Rule discharged.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Parsons.

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April 1.

KRISHNA'SHET BIN GANSHET SHETYE (ORIGINAL DEFENDANT No. 2),
APPELLANT, v. HARI VALJI BHATYE TRADING IN THE NAME OF KHEMJI
LADHA'BHAI BHATYE (ORIGINAL PLAINTIFF), RESPONDENT.*

Negotiable Instruments Act (XXVI of 1881), Secs. 30, 93 and 106—Hundi—Local usage—Hundi drawn by a manager of Hindu family—Liability—Notice of dishonour to the drawer necessary.

The Negotiable Instruments Act (XXVI of 1881), in the absence of local usage to the contrary, applies to *hundis*.

A member of a Hindu family whom it is sought to make liable by a suit on a *hundi* drawn by the manager of the family is entitled to urge that no notice of dishonour had been given to the manager (drawer) so as to make the latter liable under section 30 of the Negotiable Instruments Act (XXVI of 1881).

SECOND appeal from the decision of Rao Baliadur Kashinath B. Marathe, First Class Subordinate Judge of Ratnagiri with

*Second Appeal No. 504 of 1893.

appellate powers, varying the decree of Ráo Sáheb V. K. Sováni, Joint Subordinate Judge of Chiplún.

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The plaintiff sued to recover from the defendants the sum of Rs. 637-12, including interest and protesting charges, due on account of a *hundi* dated the 25th March, 1892, and drawn by defendant No. 1. The defendants were brothers and members of a joint Hindu family. Defendant No. 1 had a shop of which he was the sole manager.

Defendant No. 1 admitted the claim.

Defendant No. 2 pleaded that he lived separate from his brother, defendant No. 1, and that he was not liable to the claim.

The Subordinate Judge found that defendant No. 2 was not liable to the claim, because the *hundi* was not drawn with his consent and also because no notice of dishonour was served upon him under section 93 of the Negotiable Instruments Act (XXVI of 1881). He, therefore, allowed the claim against defendant No. 1 alone.

On appeal by the plaintiff the Judge found that section 93 of the Negotiable Instruments Act was not applicable to defendant No. 2, whose liability to the plaintiff's claim arose under the Hindu law, the defendants being members of an undivided family of which defendant No. 1 was the manager. He, therefore, varied the decree by holding the share of defendant No. 2 liable to the claim, along with the person and property of defendant No. 1.

Defendant No. 2 preferred a second appeal.

Ganesh K. Deshamukh for the appellant (defendant No. 2) :—The point of Hindu law and union was raised for the first time by the appellate Court without there being any allegation to that effect in the plaint or without there being an issue on the point in either of the lower Courts.

We submit that section 93 of the Negotiable Instruments Act is applicable. No notice contemplated by that section was ever given. The finding of the first Court is quite distinct on that point.

Gangarám B. Rele (with *Shámráv M. Rele*) for the respondent (plaintiff) :—Defendant No. 2 is not held liable under the Nego-

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negotiable Instruments Act. Defendant No. 1 was the manager of the family, and, therefore, defendant No. 2 was held liable. The person primarily liable is defendant No. 1 and he has admitted the claim without raising any plea of notice contemplated by section 93 of the Act. Defendant No. 2 is, therefore, estopped from raising the plea.

SARGENT, C. J.:—The Negotiable Instruments Act, in the absence of local usage to the contrary, applies to *hundis*. See *Moti Lal v. Moti Lal* ⁽¹⁾. No usage has been alleged, although the question as to notice was argued in both Courts. Notice being necessary in the case, the lower appeal Court was wrong in holding that the defendant No. 2 cannot avail himself of the provisions of section 93 of the Negotiable Instruments Act. As a member of the Hindu family whom it is sought to make liable by this suit on the *hundi* drawn by the manager (the defendant No. 1) in the course of the family business, he would be entitled to urge that no notice of dishonour had been given to the defendant No. 1 so as to make the latter liable on the bill under section 30. We must, therefore, send back the case for a finding on the following issue:—

1. Whether notice of the *hundi* having been dishonoured was given to defendant No. 1 within reasonable time, having regard to section 106 of the Negotiable Instruments Act?

Parties to be allowed to give fresh evidence. Finding to be returned within three months.

Issue sent down.

(1) I. L. R., 6 All., 78.