the terms of his prior statement to the Deputy Commissioner indicate that the first accused never, in fact, made any admission of the receipt of the money. The entries in the accounts I regard as fraught with suspicion, and as damaging, rather than assisting, the prosecution. It is unlikely that if Shanmugam took the precaution of altering the entry in the ledger, he would have failed to alter the day-book; especially as it could be done so easily and effectually by rewriting one-half of a cadjan, and it is incredible that if he thought it necessary to obliterate the word "Inspector" in the ledger, he would have done it in such a way as to still leave it perfectly legible. It is impossible on the evidence to say that Venkatesa Iyer, or other enemies of the accused, had no opportunity of making such an alteration after the books were seized. If that entry is a forgery, as I strongly suspect that it is, it becomes impossible to rely on the evidence of Shanmugam or the other witnesses who are his dependents.

The inference sought to be drawn from the increase of salt weighed out after the first December is not, by itself, important, as it may easily have been due to other causes altogether. There is no independent evidence to show that Shanmugam was at the time pressing to be allowed larger deliveries.

I would refuse to set aside the verdict of the jury, and would dismiss the appeal.

APPELLATE CIVIL.

Before Sir Charles Arnold White, Chief Justice, and Mr. Justice Benson.

VENKATA SUBRAMANIA AYYAR (PLAINTIFF), APPELLANT,

v.

KORAN KANNAN AHMOD AND OTHERS (DEFENDANTS), RESPONDENTS.*

1902. February 21.

Civil Procedure Code—Act XVI of 1882, s. 257-A—Agreement to give time for the satisfaction of a judgment-debt.

The test as to whether section 257-A of the Code of Civil Procedure operates to render an agreement void is whether the parties agree that the judgment-debt,

* Second Appeal No. 910 of 1900, against the decree of E. L. Vaughan, District Judge of North Malabar, in Appeal Suit No. 26 of 1900, preferred against the decree of J. F. Pereira, District Munsif of Vayitri, in Original Suit No. 56 of 1899.

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qua judgment-debt, shall be put an end to. If so, the section does not render the agreement void. If not, it does.

After a decree had been passed in favour of a plaintiff in a suit, the defendant gave plaintiff a bond by which he undertook to pay plaintiff, by instalments, the amount still due to him under the decree, after giving credit for a payment which had already been made on account. The bond gave plaintiff a twofold remedy in case of default,— first, a right to sue for the balance, secondly, a right to recover the balance by executing the decree. The sanction of the Court was not obtained. Plaintiff received instalments in pursuance of the terms of the bond for some time, but defendant subsequently ceased to make any further payments. Plaintiff thereupon brought this suit on the bond to recover the balance which still remained unpaid, when it was pleaded in defence that the bond was void under section 257-A of the Code of Civil Procedure :

Held, that the effect of the bond was to keep alive the relation of judgment-creditor and judgment-debtor by the express agreement of the parties, the debt being enforceable as a judgment-debt. And that, on its true construction, the bond was an agreement to give time for the satisfaction of a judgment-debt, and, as the sanction of the Court had not been obtained, was void.

Also, that the agreement was none the less void because one of the parties to it, (the legal representative of one of the judgment-debtors), had not been one of the parties to the suit in which the decree was obtained.

Juji Kanti v. *Annai Bhatta*, (I.L.R., 17 Mad., 382), and *Hukum Chand Oswal* v. *Taharunnessa Bibi*, (I.L.R., 16 Calc., 504), commented on.

SUIT to recover Rs. 2,500 (by sale of certain hypothecated properties, and of other properties of the defendants, and personally from defendants Nos. 1 and 2) being balance of principal due under a registered hypothecation bond executed by defendants Nos. 1 and 2 and their father Amotti Hadzi (since deceased) to plaintiff's paternal grandfather Subben Patter (since deceased) on 14th March 1887. Plaintiff's grandfather obtained decrees against the father of defendants Nos. 1 and 2 in Original Suit No. 16 of 1885 and (on appeal) in Appeal Suit No. 47 of 1886, whereupon a settlement of account took place, a sum of Rs. 7,500 being found to be due by the father of defendants Nos. 1 and 2, to the plaintiff's grandfather. A bond (filed as Exhibit A in the present suit) was thereupon executed as follows :—

"Agreement executed by 1. Amotti Haji—occupation, cultivation and trade, son of Mussalman Mappila Koran Kunnen Kuttiali, residing in Changatam Tharayil Mechilatt Nadakal, Poranmanoor Amsom, Wynad taluk, and sons 2. Ahmud 3. Kuttiali, to pensioner Subben Patter, son of Parakum Meethal Venkata Subben Patter —Hindu Brahman—of Payingatteri gramom (village), Nalloornad Amsom of the said taluk on 14th March 1887 ;— Rs. 7,500 have been found to be due to you after deducting the payment made

to-day out of the total amount found this day to be payable to you by three of us jointly, being the decree amount and Court costs with interest under the decrees passed against us, the first and second defendants, in Original Suit No. 16 of 1885 on the file of the North Malabar Subordinate Court and in its Appeal No. 47 of 1886 on the file of the High Court, Madras. It has been agreed that this sum of seven thousand five hundred rupees, without interest, should be paid up by fifteen instalments of Rs. 500 each from the year 1063 (1887–1888) to the year 1077 (1901–1902), each instalment being payable annually on the 1st Minom (13th March) and that receipts should be obtained and registered at our cost. Our properties moveable and immoveable, given in the following schedule including the mortgage property of the decree and other property, are hypothecated in respect of this. In default of payment of the amount by instalments stipulated as above, it has been agreed to pay with interest, all sums in a lump irrespective of the instalment time. In default of this, it has been agreed that you do recover it by duly executing the decree of the Court against our persons or our properties consisting of those mortgaged and not mortgaged as given below. If receipt registered be not granted in respect of the amount paid within the stipulated time, it has been agreed that he should bring it to the notice of the Court. It has also been agreed that the fact of the settlement of the matter of this decree, agreed to as above, be brought to the notice of the Subordinate Court by a petition to be presented to it now by both parties . . . . Besides the encumbrance upon the mortgaged properties herein, no one has any pecuniary right in them, and no encumbrance will be created pending the liquidation of this debt. If any be created, it will be invalid and we shall be in fault. List of documents pledged as security in respect of the mortgaged properties :—As the documents in respect of properties are not, after mortgage, now in possession but given in the Revenue Settlement Cutcherry, they cannot be given now. When this debt shall have been liquidated, this document with the pledged documents will be received back and the decree will have to be cancelled then. This debt will be liquidated by one or all of us. Witnesses hereof are Sankara Subben Subbarayan Patter of the said gramom and Panukkaran Kuttiali, residing in Mechilatt Nadakal. Written to the knowledge of these, by Pollayott Venkiteswara Patter of Payingatteri gramom.

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1. (Signed) Amotti. 2. (Signed) Ahmod. 3. (Signed) Kuttiali. *Witnesses.*—1. (Signed) Subbarayan Patter. 2. (Signed) Kuttiali."

The plaint recited the terms of this bond, and alleged that after ten instalments, amounting to Rs. 5,000, had been paid, defendants fell into arrears and failed to pay the further instalments. Defendants Nos. 3 to 10 were joined, as members of the family of defendants Nos. 1 and 2, the debt having, as plaintiff alleged, been contracted for family purposes. Plaintiff claimed as heir to his late father, contending that the debt had fallen to his share at a division between his father and his father's brother.

First defendant admitted the bond (exhibit A), but pleaded that as it was an agreement to give time for the satisfaction of the decree and had been entered into without leave of the Court, it was void. He also challenged plaintiff's right to sue, there being other heirs of the late Subben Patter. Second defendant supported first in his defence, defendants Nos. 3 and 4 remained *ex parte*, defendants Nos. 5 and 8 filed defences which are not material to the point decided, and defendants Nos. 6, 7 and 9 were also *ex parte*.

The second issue raised the question whether the bond (exhibit A) was void under section 257-A of the Code of Civil Procedure, and whether it was not binding on defendants Nos. 3 to 10; and the fourth issue raised the question of non-joinder of parties. The District Munsif held that the bond was such as was contemplated by section 257-A and was void and unenforceable by suit. He also said that it was admitted that plaintiff's younger brother had an equal right to the debt with plaintiff, who was the head of a joint Hindu family, and held that the suit was bad for non-joinder of parties. He dismissed the suit.

Plaintiff appealed to the District Judge, who said:—"Plaintiff appeals against the decision of the lower Court deciding issues II and IV against him. Upon the former issue he contends that the plaint Karar (exhibit A) is not void under Civil Procedure Code, section 257-A. He argues that the introduction of a new party and new lands in exhibit A show it to have superseded the original decree. He quotes a number of decisions which only go to show that the plaint bond is void for want of consideration. Exhibit A is admittedly an agreement to give time for the satisfaction of the original decree, executed without consideration and expressly stipulating that it shall remain in force. It provides for the execution of the decree in case of non-fulfilment of its (exhibits A's)

terms. I agree with the lower Court upon issue II. It is consequently unnecessary to discuss issue IV." He dismissed the appeal, but without costs. Plaintiff preferred this second appeal.

Sundara Ayyar, for appellant.—The bond exhibit A is not void by reason of section 257-A. One of these present defendants was not a defendant in the suit of 1885, though he was liable under the decree passed in that suit. Though exhibit A gives plaintiff the right to execute the former decree, that is not the only remedy which exhibit A gives. It gives him a new right to execute as against other property which was not liable under the decree; and it also gives him a personal right as against another party. The remedies open to plaintiff are twofold and he may adopt the one or the other. Moreover, the document should be construed against the persons who executed it. The High Courts of Calcutta and Madras take the same view of section 257-A. In *Juji Kanti* v. *Annai Bhatta*(1), it was held to relate only to proceedings in execution, and would not bar a fresh suit. Consideration moves from plaintiff by the extension of time; and from the defendants by the giving of further security. Sanction need only be obtained when execution proceedings are taken (*Yella Chetti* v. *Munisami Reddi*(2) and *Mallamma* v. *Venkappa*(3)). [He also referred to *Jhabar Mahomed* v. *Modan Sonaker*(4) and *Hukum Chand Oswal* v. *Taharunnessa Bibi*(5).] Section 257-A is not an obstacle to a suit against a person who is not a party to the decree, but only applies to parties to (it *Yella Chetti* v. *Munisami Reddi*(2)). [On the question of non-joinder he contended that plaintiff was entitled to sue as manager, but a petition had been filed in the Appellate Court asking that plaintiff's brother might be added. On this point he cited *Nilmony Dassy* v. *Sonatun Doshayi*(6) as showing that a decree is binding on other members of the family even if not parties to the suit if the debt in respect of which it was passed was binding on them; *Arunachala Pillai* v. *Vythialinga Mudaliyar*(7) as showing that the managing member may maintain the suit; *Anyamuthu Pillai* v. *Kolandavelu Pillai*(8), where the

(1) I.L.R., 17 Mad., 382.
(2) I.L.R., 6 Mad., 101.
(3) I.L.R., 8 Mad., 277.
(4) I.L.R., 11 Calc., 671.
(5) I.L.R., 16 Calc., 504.
(6) I.L.R., 15 Calc., 17.
(7) I.L.R., 6 Mad., 27.
(8) I.L.R., 23 Mad., 190.

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Court allowed a brother of the managing member to be subsequently added as co-plaintiff; *Ramayya* v. *Venkataratnam*(1), where an omission to join was treated as a formal defect. He also pointed out that the original decree had become barred by limitation.]

Subrahmania Sastri, for respondents.—The objection is based on section 257-A. If the bond, exhibit A, is enforceable, no proceedings can be taken in execution. Therefore all the cases in which a suit on the bond was permitted, proceed upon the assumption that the decree had ceased to exist. But this decree is only suspended, for exhibit A gives the plaintiff the right to execute it as an alternative. So it is within the mischief contemplated by the section, the object of which is to prevent a judgment-creditor from holding his decree for an indefinite length of time over his judgment-debtor's head. *Tukaram* v. *Anantbhat*(2) shows that such a bond suspends, and does not destroy the right under the decree. The agreement is therefore void as being directly within the section. There is no new party: he is only the son of one who was a party to the decree. Nor would it affect the question if there were a new party. The policy of section 257-A is dealt with in *Heera Nema* v. *Pestonji*(3). [He referred to the following as cases in which a suit was permitted:—*Hukum Chand Oswal* v. *Taharunnessa Bibi*(4) where the bond sued on had been executed by others: *Ramjipandu* v. *Mahomed Walli*(5), *Shripatrav* v. *Govind Narayan*(6). On the question of non-joinder he referred to *Angamuthu Pillai* v. *Kolandavelu Pillai*(7).]

Sir ARNOLD WHITE, C.J.—As regards the question of the construction of the bond (exhibit A) the District Munsif held that the only remedy open to the plaintiff, on default by the defendants, was to apply for the execution of the decree mentioned in the bond. The District Judge, apparently, took the same view. It seems to me clear that on the true construction of the bond the document purports to give a twofold remedy to the plaintiff on failure by the defendants to pay the instalments mentioned in the bond,—first, a right to sue for the balance of the Rs. 7,500, secondly,

(1) I.L.R., 17 Mad., 122.
(2) I.L.R., 25 Bom., 252.
(3) I.L.R., 22 Bom., 693.
(4) I.L.R., 16 Calc., 504.
(5) I.L.R., 13 Bom., 671.
(6) I.L.R., 14 Bom., 390.
(7) I.L.R., 23 Mad., 190.

a right to recover the balance by executing the decree. This appears to be the true construction of the document whether the words "in default of this" are read as meaning in default of payment of the instalments or in default of payment of the lump sum. There is an express agreement to pay the instalments, an express agreement to pay the lump sum, on failure to pay the instalments, and an express agreement that the decree shall be kept alive and the rights of the plaintiff in execution of the decree preserved.

It has been contended on behalf of the defendants that inas much as under the terms of the bond the relation of judgment-creditor and judgment-debtor still subsists the bond is an agreement to give time for the satisfaction of a judgment-debt and the sanction of the Court not having been obtained, section 257-A of the Code of Civil Procedure renders the agreement void.

Section 257-A might no doubt be construed as having the effect of rendering the agreement void only in so far as it purported to give time, so that, notwithstanding the agreement the judgment-debtor would not be entitled to set up the agreement as a bar to the judgment-creditor's rights in execution, whilst the judgment-creditor on the other hand would be entitled to enforce an independent contract to pay the judgment-debtor which was supported by consideration. But it seems to me that so to construe the section would be to defeat the object of the Legislature, viz., the protection of judgment-debtors. I assume in the present case that the contract to pay is supported by a real consideration. Still it is a contract to pay the amount of the judgment-debt with a stipulation that it shall not be payable at the time when, under the decree, it became payable. The relation of judgment-creditor and judgment-debtor still exists by the express agreement of the parties. The debt is still enforceable as a judgment-debt. This being so, I feel it impossible to construe the bond in question otherwise than as an agreement to give time for the satisfaction of a judgment-debt. The sanction of the Court not having been obtained, I think the bond is void. If, as in the case of *Tukaram* v. *Anantbhat*(1), the effect of the mortgage bond had been to extinguish the rights of the judgment-creditor under the decree and to substitute therefor the rights given him by the mortgage bond, the agreement clearly

(1) I.L.R., 25 Bom., 252.

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would not be an agreement to give time for the satisfaction of a judgment-debt because the effect of the agreement would be to put an end to the judgment-debt. In the present case there is an express agreement to preserve the judgment-creditor's rights in execution and thus keep the judgment-debt alive. With all respect to the learned Judges who decided the case of *Juji Kamti* v. *Annai Bhatta*(1), although I think it was rightly held in that case that the contract to pay by instalments was not void, I confess I cannot follow the reasoning on which the conclusion appears to be based. The Judges observe that the scheme of the Code of Civil Procedure suggests that the intention of section 257-A was to render an agreement to pay the amount of the judgment-debt by instalments void only in so far as it affects the right to execute the decree. But in that case the consideration for the new promise to pay was the surrender by the judgment-creditor of his rights in execution of the decree. The decree was extinguished by agreement between the parties and that being so, I fail to see how any question as to how the section affected the rights of the execution-creditor in execution of the decree was material.

If a judgment-creditor is willing that his judgment-debt should be extinguished and that his rights as judgment-creditor should be given up and the judgment-debtor is willing to give and the judgment-creditor to accept other rights in substitution, I do not see how an agreement which carries out this intention is contrary to public policy or to the express words of section 257-A. The parties are dealing at arm's length, which would not be the case if the new contract was entered into upon the footing that the creditor's rights under the decree were to be kept alive and held *in terrorem* over the head of his debtor.

If a judgment-creditor wants to keep his judgment-debt alive and at the same time is willing to give time for the satisfaction thereof to the judgment-debtor, the law says that an agreement carrying out such intention shall be void unless sanctioned by the Court. In the case of *Hukum Chand Oswal* v. *Taharunnessa Bibi*(2), there was no agreement by the judgment-creditor to surrender his rights under his decree, and, that being so, I cannot help thinking the case was wrongly decided. The Judges there observe: "It

(1) I.L.R., 17 Mad., 382. (2) I.L.R., 16 Calc., 504.

seems to us that it is only in the event of an application being made to enforce the agreement entered into between the parties under the bond in the course of the execution of the decree that an objection like that now raised (*i.e.*, that the agreement was void under section 257-A) could have been successfully made." This means that, if the judgment-creditor applies to execute his decree and the judgment-debtor sets up the agreement to give time, the judgment-creditor can successfully object that the agreement is void under section 257-A, whilst there is nothing to prevent him enforcing the fresh contract the effect of which is to give the judgment-debtor time for the satisfaction of the judgment-debt. This, as I have said, seems to me to defeat the object of the Legislature.

I think the real test is that adopted by the Bombay High Court in the case of *Tukaram* v. *Anantbhat*(1). If the parties agree that the judgment-debt *qua* judgment-debt shall be put an end to, section 257-A does not render void the new contract. The new contract does not give time for the satisfaction of a judgment-debt since this judgment-debt no longer exists. If the judgment-debt is still alive, a new contract like that contained in the bond in the present case to pay the judgment-debt appears to me, although it may be supported by fresh consideration, to be an agreement to give time for the satisfaction of the judgment-debt and therefore void under section 257-A. I need only add that in my opinion the agreement in the present case is none the less void because a party who appears to be the legal representative of one of the judgment-debtors became a party to the mortgage bond, though he was not a party to the suit in which the decree was obtained.

I think this appeal should be dismissed and I think the respondents are entitled to their costs throughout.

BENSON, J.—I concur.

(1) I.L.R., 25 Bom., 252.