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 March 25.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr Justice Tyrrell.

BANDA ALI (PLAINTIFF) v. BANSPAT SINGH (DEFENDANT).*

Contract—Bond—Coercion—Consideration—Act IX of 1872 (Contract Act),
 ss. 2 (d), 15, 19, 25.

A person, while under arrest in execution of a decree which had been made against him by a Court having no jurisdiction to make it, gave the holder of such decree a bond for the amount of such decree plus a small sum paid for him for the stamping and preparation of such bond, in order that he might be released from such arrest. Held that such bond was given under duress, and that it was executed without consideration, the small sum paid by the holder of such decree for preparing and stamping the bond not being in any legitimate sense of the phrase "consideration" for such bond, and therefore such bond was void.

On the 5th January, 1879, the defendant in this suit, the lambarदार of a certain mahál, obtained in that capacity in a Court of Revenue an *ex-parte* decree against the plaintiff, a co-sharer of such mahál, for arrears of revenue, costs, and interest. On the 16th November, 1880, the plaintiff was arrested in execution of this decree. On the following day, the 17th, in order to effect his release from custody, he gave the defendant a bond for the amount of the decree. On the 3rd December, 1880, he instituted the present suit against the defendant in the Court of the Munsif of Allahabad to have the decree and the bond cancelled. He claimed on the ground that the decree was made without jurisdiction, and that the bond was invalid, as the consideration for it was the amount of a decree made without jurisdiction, and as it was given under duress. The defendant set up as a defence to the suit that the decree in question was made with jurisdiction and could not be set aside, and that the plaintiff had executed the bond while under lawful arrest, of his own free will, to effect his release. The Munsif framed the following issues for trial: (i) "Was the Revenue Court incompetent to pass the decree in dispute, and if so, is it liable to be set aside by this Court?" (ii) "Is the bond illegal?" With reference to these issues the Munsif held that the decree was made without jurisdiction; that, the amount of the decree being the consideration for the bond, the consideration of the bond was therefore illegal, and the bond invalid; and that

* Second Appeal, No. 818 of 1881, from a decree of R. D. Alexander, Esq., Judge of Allahabad, dated the 19th May, 1881, reversing a decree of Babu Pramoda Charan Banarji, Munsif of Allahabad, dated the 11th January, 1881.

the bond had been executed under duress, as it had been executed to obtain the plaintiff's release from arrest in execution of an illegal decree, and it was therefore also invalid on that ground.

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On appeal by the defendant the District Judge decided that the decree in question had been made without jurisdiction and was therefore illegal, and that all the subsequent proceedings in execution taken under it were illegal, and that the plaintiff's arrest was therefore illegal. He then proceeded to decide the question whether the plaintiff, being under illegal arrest when he executed the bond, executed it under coercion as defined in s. 15 of Act IX of 1872, and decided this question in the negative. He observed on this question as follows :

“ By s. 10 of Act IX of 1872 all agreements are recited to be contracts if they are made by the free consent of the parties competent to contract. By s. 14 of the same Act consent, which is defined in s. 13, is said to be free unless caused by coercion as defined in s. 15, and s. 15 defines coercion to be the committing or threatening to commit any act forbidden by the Indian Penal Code to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. Has therefore the defendant committed, or threatened to commit, any act forbidden by the Penal Code, and did he do so to the prejudice of the plaintiff, and with the intention of causing him to execute this bond? As to the first point, as the defendant procured the arrest of the plaintiff, which arrest was illegal, he appears to me to have committed the act of wrongful confinement made penal by s. 342 of the Indian Penal Code, or perhaps, to be more strict, abetted such wrongful confinement; an act made penal under s. 109 read with s. 342 of the Indian Penal Code, and it is clear that he did this to the prejudice of the plaintiff. But did he do it with the intention of causing him to execute that bond? There is a great distinction between getting a person to execute a bond while under duress, and putting him to duress in order to get him to execute a bond; and what is clear in this case is, that the defendant had the plaintiff arrested in order to get his decree satisfied, and when he was under arrest the bond was executed in order that he might be released; that is to say, the defendant did not have the plaintiff arrested in order that he might get this bond out of

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him, but to get the money due under the decree out of him. When the plaintiff was under arrest he executed this bond to obtain his release, so that he cannot be said to have consented under coercion as defined in s. 15, Act IX of 1872, though he may have consented while under coercion as it is ordinarily spoken of. The only question, therefore, that remains for determination is whether there was consideration given for the bond, looking back before the decree illegally given."

The District Judge remanded the case to the Munsif for the determination of this issue. The Munsif decided that the defendant had paid land-revenue for the plaintiff, and if the bond was for that money, it was not without consideration. On the case being returned to the District Judge it was contended on behalf of the plaintiff that the decree, and not the money paid by the defendant for the plaintiff for land-revenue, was the consideration for the bond, and that the decree being illegal, the consideration was illegal too. The District Judge observed as follows as regards this contention :—

" Assuming this to be the case, the bond recites that over and above the Rs. 81 due on the decree, the plaintiff took a further loan of Rs. 3 to pay stamp paper and registration charges for the bond, and it is admitted that he did do this. Here therefore there is a separate consideration clearly to the sum due under the decree, and though it is a small sum, it is none the less consideration which would prevent the cancellation of the bond on the ground of want of consideration. Consequently assuming the plaintiff's contention to be right, he is still not entitled to maintain a suit to cancel this bond. But I do not agree with the contention. The decree, apart from costs, represented the sum paid by the defendant for the plaintiff for government revenue, so the defendant did give the plaintiff good consideration, which the bond in reality recites, though the decree is spoken of. I therefore, on the grounds given here and in the order of remand, reverse the decision of the lower Court."

The plaintiff appealed to the High Court, contending (i) that an *ex-parte* decree, passed admittedly without jurisdiction, could not be held to be good consideration for a bond executed by the

judgment-debtor while in arrest in execution of such decree; (ii) that the consideration for the bond in suit was expressly mentioned therein to be the decree, and not the amount of revenue said to have been paid by the defendant for the plaintiff; (iii) that even if the consideration for the bond was such amount, the bond would not be valid and enforceable at law under the circumstances under which it was executed; and (iv) that the Rs. 3 admitted to have been received by the plaintiff for the cost of the bond could not form legal and valid consideration therefor.

Pandits *Ajudhia Nath* and *Nand Lal*, for the appellant.

Munshi *Hanuman Prasad*, *Lala Jokhu Lal*, and Mr. *Simeon*, for the respondent.

The judgment of the Court (STUART, C.J., and TYRRELL, J.) was delivered by

TYRRELL, J.—We have given this case a long hearing and much consideration. The result is that we find the pleas in appeal to be valid. The bond obtained from the appellant was undoubtedly given when he was in duress, and it cannot be held that the small sum paid by the creditor for the charges of stamping and writing the document was in any legitimate sense of the phrase “consideration” for the bond. We decree the appeal with costs.

Appeal allowed

Before Mr. Justice Straight and Mr. Justice Tyrrell.

GAURA (PLAINTIFF) v. GAYADIN (DEFENDANT).*

Certificate for collection of debts—Effect of certificate against debtors—Act XXVII of 1860, s. 4—Cause of action.

A judgment-debtor sued for a declaration that the son of the deceased decree-holder, to whom a certificate had been granted under Act XXVII of 1860 in respect of the debts due to his father's estate, was not competent to apply for execution of the decree, as, being illegitimate, he was not the legal representative of the deceased decree-holder. *Held* that the suit was not maintainable, the certificate under Act XXVII of 1860 being, under s. 4 of the Act, conclusive of the defendant's representative character, and a full indemnity to all persons paying their debts to him.

* Second Appeal, No. 1005 of 1881, from a decree of Babu Prumoda Charari Banarji, Subordinate Judge of Allahabad, dated the 26th May, 1881, reversing a decree of Pandit Indar Narain, Munsif of Allahabad, dated 14th March, 1861.

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