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off probably for a lesser sum than was entered in the deed of sale and thus got the whole of the amount entered in the deed of sale from Rallia Ram by bringing criminal proceedings does not render those debts any the less antecedent to the sale itself. In these circumstances, in my judgment, it is perfectly clear that the present suit has been brought in bad faith and I would therefore accept this appeal and dismiss the plaintiff's suit with costs.

The cross-objections will also be dismissed with costs.

ZAFAR ALI J.

ZAFAR ALI J.—I agree.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Zafar Ali.

MUHAMMAD BAKHSH-KARAM ELAHI (PLAINTIFFS), Appellants

versus

SHADI MUHAMMAD-MUHAMMAD BAKHSH (DEFENDANTS), Respondents.

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Nov. 3.

Civil Appeal No. 1397 of 1923

Indian Evidence Act, 1 of 1872, section 102—Onus probandi—*Suit for money due—balances of account—signed by defendants—effect of.*

In a suit for money due as the result of dealings with the defendants which had extended over a definite and stated period the plaintiffs relied upon certain balances in their favour which had been signed by the defendants. The trial Court dismissed the suit on the ground that there was no proof of the separate items upon which the balances had been struck nor of the delivery of goods to which certain of those items applied.

Held, (on second appeal) that the *onus* was upon the defendants to rebut the presumptions arising from their having signed the balances struck.

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Ram Chand v. *Chhunnu Mal* (1), followed.

Held further, that as the parties were throughout aware of what they had to prove, the erroneous view taken by the lower Courts as to *onus* was not a sufficient ground for remanding the case in order to give the defendants a second opportunity of rebutting the plaintiff's evidence.

Second appeal from the decree of A. L. Gordon Walker, Esquire, Additional Judge, Lahore, dated the 5th March 1923, affirming that of Sayad *Nisar Kutab, Subordinate Judge, 2nd class, Lahore, dated the 31st May 1922, dismissing the plaintiffs' suit.*

TIRATH RAM, and MUHAMMAD AMIN, for ABDUL QADIR, for Appellants.

SHUJA-UD-DIN, for Respondents.

JUDGMENT.

BROADWAY J.

BROADWAY J.—The firm Muhammad Bakhsh-Karam Ilahi sued the firm of Shadi Muhammad-Muhammad Bakhsh for a sum of Rs. 3,259-0-3, claiming that that amount was due as a result of certain transactions between the two firms as evidenced by the account books. Subsequent to the filing of the suit a sum of Rs. 314 was said to have been paid by the defendant firm to the plaintiff firm and consequently the actual amount claimed was Rs. 2,945-3-0. The parties are *Khojas* of Kasur in the district of Lahore and are related to each other. One of the defendants is an uncle of one of the plaintiffs. The entries in the account books of the plaintiffs are mainly in the handwriting of the defendant Muhammad Bakhsh who is the uncle. There are two or three balances struck, some signed by both the defendants, the last one being written by Muhammad

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Bakhsh and signed by Shadi Muhammad. The Courts below dismissed the plaintiffs' suit on the ground that the *onus* of proving the correctness of the accounts had not been discharged by the plaintiffs.

With regard to the first balance of Rs. 1,841-6-0, while it was admitted that the defendants had struck this balance, the Courts below held that it was necessary for the plaintiff firm to prove each and every item of that account before the striking of the balance. In doing so the Courts have lost sight of the principle laid down by a Full Bench of this Court in *Ram Chand* v. *Chhunnu Mal* (1), where it was held that "where an unregistered document, the execution of which is admitted or proved, contains an admission of the payment of the consideration, the *onus* lies on the person executing the document to prove that what he himself admitted to be true was, as a matter of fact, false and that he did not receive the consideration." In this case all the former decisions of this Court as well as authorities from other High Courts were considered and carefully weighed. Admittedly this balance of Rs. 1,841-6-0 was struck by the defendants and signed by both of them. In it that amount is acknowledged as due to the plaintiff firm. All that the plaintiff firm was called upon to do was to prove that this balance had as a matter of fact been struck by the defendants. This they have admittedly done. It was then for the defendants to prove the circumstances in which they came to execute that balance and to establish the fact that it had been induced by fraud or without a proper comprehension of the accounts, etc.

The next item for consideration is one of Rs. 1,857-1-9. This is signed by both the defendants

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and they acknowledged the fact that this amount is due on account of losses in connection with certain cotton transactions. This item has been disallowed by the Courts below on the ground that there was no proof of the actual delivery of the cotton. Here again the principle referred to above has been entirely lost sight of. Both the defendants having admitted in writing that this amount was due on account of losses incurred in connection with dealings in cotton it was for them to establish that the transaction was a *badni* one or one which could not be enforced in a Court of Law and that, therefore, they were not liable to pay that amount, their admission notwithstanding. It has been urged by Dr. Shuja-ud-Din for the respondent firm that the suit was one on a balance and that it was not maintainable. An examination of the plaint shows beyond question that the suit is not one on a balance. It is clearly a suit for the payment of money due as a balance resulting out of certain dealings which had extended over a definite and stated period. The balances struck have been referred to merely as pieces of evidence in the case. This view is supported by the authorities cited by Dr. Shuja-ud-Din which need no discussion. He then asked that the case should be remanded in order that the defendants-respondents should be given an opportunity to produce evidence rebutting the presumptions arising out of their admissions. It appears that issues have been correctly settled, parties have throughout been fully aware of what they had to prove and if the defendant firm lost sight of the fact that the *onus* of rebutting the plaintiffs' evidence was on them that is not, in my opinion, a sufficient ground to remand the case in order that they might have a second opportunity of rebutting

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the plaintiffs' evidence. In my judgment the decision of the Courts below is erroneous owing to the fact that they have taken a wrong view on the question of the *onus* in this case.

I would, therefore, accept the appeal and grant the plaintiffs a decree for the amount claimed with costs throughout.

ZAFAR ALI J.

ZAFAR ALI J.—I concur

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Addison.

1926

Nov. 3.

KHUDA YAR AND OTHERS (PLAINTIFFS). Appellants

versus

MUHAMMAD YAR AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 234 of 1926.

Custom—Succession—Awans of Mauza *Nammal, district Mianwali—whole-blood—whether excludes half-blood*—Riwaj-i-am.

Held, that among Awans of *Mauza* Nammal of the Mianwali district a brother of the whole-blood succeeds to his deceased brother's estate to the exclusion of his brother of the half-blood.

Khuda Yar v. *Ahmad* (1), *Masta* v. *Pohlo* (2), and *Muhammad* v. *Tara,* Civil Appeal No. 286 of 1898 (unpublished), referred to.

Sher Khan v. *Muhammad Khan* (3), and *Ghulam Muhammad Khan* v. *Nur Khan* (4), discussed.

Second appeal from the decree of Rai Sahib Lala *Shibbu Mal, District Judge, Mianwali, dated*

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(1) 33 P. R. 1919.
(2) 52 P. R. 1896.
(3) (1923) I. L. R. 5 Lah. 117.
(4) 65 P. R. 1917.