APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Birdwood.

1885. *June* 18.

MA'LOJI SANTA'JI, PLAINTIFF, *v.* VITHU HARI, DEFENDANT.*

Evidence—Bond—Suit on bond the execution of which is admitted—Consideration—Burden of proof—Dekkhan Agriculturists' Relief Act (XVII of 1879), *Secs.* 12 *and* 15*—Practice—Procedure.*

In cases to which the Dekkhan Agriculturists' Relief Act (XVII of 1879) applies, where a suit is brought upon a bond the execution of which is admitted by the defendant, no strict rule can be laid down as to the party upon whom the burden of proof rests. If the parties adduce no evidence, the Court must be content with the evidence of the parties themselves, and endeavour, in the language of section 15 of the Act, to "satisfy itself". If it cannot "satisfy itself as to the amount which should be allowed on account of principal or interest, or both", it may, under that section, direct, of its own motion, that such amount be ascertained by arbitration. Although proviso 2 of section 92, and section 102 of the Evidence Act I of 1872, which correspond with clause 1 of Regulation V of 1827, have not been repealed, the intention of the Legislature in enacting the Dekkhan Agriculturists' Relief Act (XVII of 1879) clearly was to relieve the debtor of the necessity of proving failure of consideration, although admitted in the bond on which he is sued, and the execution of which he admits.

THIS was a reference by Ráv Sáheb Máneklál Narotamdás, additional Subordinate Judge of Sátára, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The reference was stated as follows :—

"The plaintiff sues to recover Rs. 13-8-0, principal, and Rs. 13-8-0, interest—in all Rs. 27—due upon a bond dated the 11th November, 1879. The defendant, while admitting the execution of the bond, alleges, in general terms, that it was passed in consideration of an antecedent liability existing at the time of its execution. He contends also in the same way that the amount mentioned in the bond is made up in part of a sum of money which was due on account of interest, and which was subsequently converted into principal when the bond was passed, and that the plaintiff is not entitled to claim further interest on such sum.

"2. The defendant's allegations amount, in effect, to a plea of non-liability as regards a portion of the claim, and it, therefore, becomes necessary, under section 12 of the Dekkhan Agriculturists'

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Relief Act (XVII of 1879), as amended by Acts XXIII of 1881 and XXII of 1882, to inquire into the history and merits of the case from the commencement of the transaction out of which the suit has arisen, and to take an account upon the principle laid down in section 13 of the same Act. The plaintiff does not produce any accounts to show either that the money was paid in cash, or that the consideration was otherwise made up, and there is reason to believe that he has none in his possession, as he is a charcoal vendor by profession, and belongs to a caste which, in point of intelligence and education, stands on much the same level with the ordinary *kunbi* or professional agriculturist, the caste to which the defendant belongs.

"The question, which I beg to submit for the decision of the High Court, is, whether, when, as in this case, the execution of the bond is admitted by the defendant, it does not lie upon the defendant to show that he has not received the consideration in cash as set forth in the bond, and that the principal money named in the bond consists in part of interest converted into principal. Section 12 of the above Act repeals section 9, clause 1, of Bombay Regulation V of 1827, which enacted that written acknowledgments of debts shall not be held conclusive as to the amount, if the defendant can show that he has not received full consideration for it; and section 13, clause (*b*), lays down that a defendant shall be debited with such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor as part of the transaction. Whether a particular item or sum of money was received or not by the defendant from the creditor, is a question of fact to be determined, I believe, in much the same way as any other disputed question of fact. Under section 1 of the Indian Evidence Act, the rules contained in that Act apply to all judicial proceedings, unless a special rule of evidence is laid down in any other statute or enactment. While repealing the Regulation section quoted above, section 12 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) leaves untouched sections 92 and 102 of the Evidence Act, and the combined effect of both these sections is to reproduce the same rule which was laid

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down in the repealed section of the Bombay Regulation. Section 13, clause *b*, of the Agriculturists' Relief Act (XVII of 1879) enunciates the principle upon which accounts are to be taken, but it does not deal with the question of the burden of proof, perhaps because the Legislature thought that section 106 of the Evidence Act was wide enough to enable the Courts to deal with each case according to its exigencies. Considering that suits are not unfrequently brought by one agriculturist against another, or by or against persons who, though coming within the definition of an agriculturist, do not really belong to that helpless and ignorant class which it was the intention of the Legislature to take under their special protection, it might well be supposed that the question of the *onus* of proof was not dealt with in section 13, because the rules contained in the Evidence Act are flexible enough to allow of the burden of proof to be regulated in each case according to circumstances. Section 13 does not say that, in making up the account, the defendant is to be debited with such sums only as should be proved by the *plaintiff* to have been actually received by the defendant, and it cannot, therefore, be taken to exclude the operation of sections 92 and 102 of the Indian Evidence Act in cases coming under the Dekkhan Agriculturists' Relief Act. Under the circumstances my own opinion on the point is that it lies upon the defendant in this case to show what amount has not been actually received by him from the plaintiff. As I entertain some doubt, however, upon the subject, I beg to refer the question for the decision of the High Court.

"The consideration, by which I am induced to make the reference, is the difficulty that not unfrequently arises in practice, when the plaintiff neither produces accounts, nor is able to prove that the consideration of a bond was paid in cash. In that case there is nothing to enable the Court to dispose of the case besides the uncorroborated statements of the parties, and the difficulty is greatly aggravated in consequence of the defendant's inability to point out the particular items to which he objects. When the burden of proof is laid upon the plaintiff, and he fails to discharge himself of the same, it might not perhaps be deemed improper, if the Court dismisses the suit *in toto*, for a party is bound to prove

his case as laid in the plaint, but in that case the suit would be dismissed in spite of the defendant's admission of the execution of the bond, and of his liability under it in respect of a greater portion of the claim. It not unfrequently happens that the plaintiff is not a professional money-lender, but an agriculturist like the defendant himself, and has merely advanced a loan to the latter for the purpose of relieving his wants. Not being a money-lender by profession, he has generally no accounts to produce in support of his allegation. He is in much the same position as the defendant, and to dismiss a suit, under the circumstances, would not, in my humble opinion, be fair. To allow the suit wholly or in part, would be a work of mere conjecture. The difficulty, however, would be removed if the question of the burden of proof is held to lie on the party who wishes the Court to believe in the existence of a particular state of things."

There was no appearance for the parties.

Per Curiam.—In investigating the history and merits of the case, as required by section 12 of Act XVII of 1879, it is the duty of the Court to hear what each party has to say, and we do not think that any strict rule as to the *onus* of proof can be laid down for its guidance in such cases. Section 12 of the Act repeals section 9, clause 1, of Regulation V of 1827, so far as regards any suit to which section 12 applies. It is true, it does not expressly repeal the corresponding enactment contained in section 92, proviso I, and section 102 of the Evidence Act of 1872; but the intention of the Legislature clearly was to relieve the debtor of the necessity of proving failure of consideration, although admitted in the bond on which he is sued, and the execution of which he admits. If the parties adduce no evidence, as would appear to have been the case here, the Court must be content with the evidence of the parties themselves, and endeavour to "satisfy itself", in the language of section 15 of Act XVII of 1879. If it cannot "satisfy itself as to the amount which should be allowed on account of principal or interest, or both," it may, under that section, direct, of its own motion, that such amount be ascertained by arbitration. We think no other answer can be given to the reference.