ORIGINAL CIVIL.

FULL BENCH.

Before Sir C. F. Farran, Kt., Chief Justice, Mr. Justice Candy and Mr. Justice B. Tyabji.

HEERA NEMA AND OTHERS (PLAINTIFFS) *v.* PESTONJI DOSSABHOY AND ANOTHER (DEFENDANTS).*

1893. *March* 4.

Civil Procedure Code (Act XIV of 1882), Secs. 257A, 258—Settlement of decree without sanction by giving promissory note payable on demand—Note renewed from time to time—Suit on note—Note void under section.

On the 4th December, 1889, the plaintiffs obtained a decree against the defendants for Rs. 941. The decree was made payable in eight days, *i.e.* on or before the 12th December, 1889. On the 9th December, 1889, *i.e.*, before the decree was capable of execution, it was settled by the defendants' paying Rs. 600 in cash and passing a promissory note for Rs. 341 payable on demand and carrying interest at 3 per cent. per mensem. The decree was satisfied and handed over to defendants, and plaintiffs also endorsed the summons to that effect. That compromise was not sanctioned by the Court.

On the 9th November, 1892, and again on the 4th November, 1895, the plaintiffs made up their account with defendants and obtained new promissory notes from them for the amount found due in renewal of the note passed in 1889. The present suit was brought on the note passed on the 4th November, 1895, which was for Rs. 815, and carried interest at 3 per cent. per mensem.

Held, that the note sued on fell within the purview of section 257A of the Civil Procedure Code (Act XIV of 1882) and was void and unenforceable under the provisions of that section.

The consideration for the note given in 1889 was the agreement of the plaintiffs to accept it in satisfaction of the decretal balance due to them. If that agreement was void, the note given for the void consideration was void also. The note was not, in fact, the agreement, but was given in performance of the agreement.

CASE stated for the opinion of the High Court under section 69 of the Presidency Small Cause Courts Act, XV of 1882, by C. W. Chitty, Chief Judge:—

"This was a suit brought by the plaintiffs to recover a sum of Rs. 1,418-1-7 representing the principal moneys and interest due on a promissory note for Rs. 815, dated the 4th November, 1895, and executed by both the defendants.

*Small Cause Court Reference, No. 19624 of 1897.

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"2. The facts of the case which are not in dispute, together with the reasons for my decision, are fully set out in my judgment, a copy of which is annexed, and to which for brevity's sake I crave leave to refer.

"The following is the statement of facts referred to:—

"In 1889 the present plaintiff and one Luckma Sada, now deceased, filed a suit (No. 24103 of 1889) against the present defendants for Rs. 821-6-4.

"That suit was based on two promissory notes for Rs. 100 each, the balance of the claim being for interest. The defendants were served but did not appear, and on the 4th December, 1889, the plaintiffs in that suit obtained a decree against both the defendants for the full amount and the Court costs, and for a further sum of Rs. 51, professional costs against the first defendant.

"The decree was made payable by the first defendant in eight days, *i.e.* on or before the 12th December, 1889, and execution was stayed against the second defendant for one month, with liberty to him to come in and apply for instalments.

"On the 9th December, 1889, *i.e.*, before the decree was capable of execution, it was settled by both the defendants by a payment of Rs. 600 in cash and the passing of a promissory note for Rs. 341 payable on demand and carrying interest at 3 per cent. per mensem. The decree was satisfied and handed over to the defendants, and plaintiffs also made an endorsement on the defendants' summons to the same effect. That compromise was not sanctioned by the Court.

"On the 9th November, 1892, shortly before the promissory note for Rs. 341 would become barred by limitation, the plaintiffs made up their account with the defendants and obtained from them a promissory note for Rs. 525 in renewal of the former note for Rs. 341 with interest at 1½ per cent. per mensem in addition; that note also bore interest at 3 per cent. per mensem. On the 4th November, 1895, a similar procedure was adopted, and the promissory note in question in this suit was passed for Rs. 815, the rate of interest being the same.

"The sole question in this suit is whether this promissory note is not void and unenforceable by reason of the provisions of section 257A of the Code of Civil Procedure.

"3. I came to the conclusion, though not without doubt, that the promissory note was governed by the provisions of section 257A of the Code of Civil Procedure. As to the interpretation of that section I considered myself bound by authority, and dismissed the suit, and certified Rs. 51 professional costs of the defendants' counsel, making my judgment contingent on the opinion of the High Court. If that decision is wrong, there

would be a verdict for the plaintiffs for the full amount claimed and costs, and Rs. 51 professional costs.

"4. The questions for their Lordships' consideration are:

"(i) Whether the promissory note in question falls within the purview of section 257A of the Code of Civil Procedure?

"(ii) If it does, whether it is void and unenforceable by reason of the provisions of that section?

"5. The plaintiffs have deposited in Court Rs. 51 for the professional costs and Rs. 50 to meet the costs of reference.

"6. I may add that, since my judgment was delivered, the December number of the Bombay Law Reports has been published, at p. 819 of which are some remarks of their Lordships on the section in question, which seem to support the view that the interpretation of its provisions may have to be revised by a Full Bench. See *Krishna* v. *Vasudev* (I. L. R., 21 Bom. 808)."

Lang (Advocate General) for plaintiffs:—Section 257A of the Civil Procedure Code (Act XIV of 1882) only applies to applications to execute the decree and does not apply to compromises—*Juji* v. *Annai*[1]; *Sellamayyan* v. *Muthan*[2]; *Ramghulam* v. *Janki Rai*[3]; *Haji Abdul Rahiman* v. *Khoja Khaki Aruth*[4].

This is not an agreement for satisfaction of a judgment-debt. It is itself the satisfaction of the debt. The judgment-debt is gone—*Madhavrav* v. *Chilu*[5]; *Ganesh* v. *Abdullabeg*[6]; *Davlatsing* v. *Pandu*[7]; *Vishnu* v. *Hur Patel*[8]; *Swamirao* v. *Kashinath*[9]; *Bank of Bengal* v. *Vyabhoy Gangji*[10]; *Krishna* v. *Vasudev*[11]; *Dan Bahadur* v. *Anandi Prasad*[12]; *Dalu* v. *Palakdhari*[13]. It is an agreement *in* satisfaction of the judgment-debt and not *for* the satisfaction of such debt. The latter contemplates a further transaction.

(1) I. L. R., 17 Mad., 382.
(2) I. L. R., 12 Mad., 61.
(3) I. L. R., 7 All., 124.
(4) I. L. R., 11 Bom., 6.
(5) P. J., 1881, p. 315.
(6) I. L. R., 8 Bom., 538.
(7) I. L. R., 9 Bom., 176.
(8) I. L. R., 12 Bom., 499.
(9) I. L. R., 15 Bom., 419.
(10) I. L. R., 16 Bom., 618.
(11) I. L. R., 21 Bom., 808.
(12) I. L. R., 18 All., 435.
(13) I. L. R., 18 All., 479.

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He relied on *Hukum Chand* v. *Taharunnessa Bibi*[1]; *Jhabar* v. *Modan Sonahar*[2]; *Gunamani* v. *Prankishori*[3]; *Thakoor Dyal* v. *Sarju*[4].

Scott, for defendants, cited *Pym* v. *Campbell*[5]; *Wallis* v. *Littell*[6]; *Bank of Bengal* v. *Vyabhoy Ganji*[7]. The cases of *Ramghulam* v. *Janki Rai*[8] and *Gunamani* v. *Prankishori*[3] are cases on old section 258. See *Haji Abdul* v. *Khoja Khaki*[9]. The scheme of the Code cannot override the plain words of the sections.

FARRAN, C. J.:—The first question which we have to consider upon this reference is that suggested by the argument of the Advocate General, *viz.*, whether the promissory note for Rs. 341 payable on demand with interest at 3 per cent. per mensem which the plaintiffs make the basis of their claim is an agreement for the satisfaction of the judgment-debt due to the plaintiffs within the meaning of section 257A of the Civil Procedure Code (Act XIV of 1882). This is not an exact way of stating what is the true question, but it sufficiently explains, I think, the contention of the Advocate General.

On the 9th December, 1889, the plaintiffs held a decree against the defendants for Rs. 931-8-0, and Rs. 6-8-0 were payable to them for expenses in connection with the decree, making a total of Rs. 941. The parties met together. The defendants paid Rs. 600 in cash, and for the balance agreed to give the plaintiffs their promissory note for Rs. 341 payable with interest. That indisputably was an agreement for the satisfaction of the decree, and, if the contention of the defendants on the main point is correct, it was a void agreement. In pursuance of that agreement, *ex hypothesi* void, the defendants gave their promissory note to the plaintiffs and the plaintiffs thereupon treated the decree as satisfied, handed it over to the defendants, and endorsed the summons to that effect. The consideration for the promissory note was the agreement of the plaintiffs to accept it in satisfaction

(1) I. L. R., 16 Cal., 504.
(2) I. L. R., 11 Cal., 671.
(3) 5 Beng. L. R. (F. B.), 223.
(4) I. L. R., 20 Cal., 22.
(5) 25 L. J. (Q. B.), 277.
(6) 11 C. B. (N. S.), 369.
(7) I. L. R., 16 Bom., 618 at p. 625.
(8) I. L. R., 7 All., 124.
(9) I. L. R, 11 Bom., 6 at p. 35.

of the decree. The plaintiffs have performed their part of the agreement, but none the less on that account is the consideration for the note the agreement of the plaintiffs to accept it in satisfaction of the decretal balance, and if that agreement is void, the promissory note given for a void consideration is itself void. This is, however, merely a verbal disquisition in answer to a verbal argument. Every adjustment of a decree presupposes an agreement to adjust it, and if the agreement to adjust the decree is void, the adjustment, in so far as it is executory on either side, cannot be enforced. I can see no essential difference between an agreement *for* the satisfaction of a judgment-debt and an agreement *in* satisfaction of the same. In numerous cases decided upon the section, the agreements ruled to be void were similar to the agreement in the present case, and this objection was never suggested. The concluding clause of the section makes the matter, I think, quite clear. In this view it is unnecessary to consider the argument of Mr. Scott, that the agreement was also an agreement to give time for the satisfaction of the judgment-debt. The promissory note was not, in fact, the agreement, but was given in pursuance of the agreement.

Upon the main question discussed I am of opinion that the previous rulings of this Court upon the effect of section 257A are correct and should be followed. I wish to express my full concurrence in the view forcibly expressed by the learned Chief Justice of Allahabad in the following passage: "Where the Legislature has thought fit to declare an agreement void, unless the Legislature expressly limits the application of its enactment, Courts are bound to give effect to it. There is no such limitation to be found in section 257 A."—*Dan Bahadur Singh* v. *Anandi Prasad*[1]. After considering the reason relied upon in the decision of the Calcutta and Madras High Courts for limiting the operation of section 257 A to the Courts executing the decree I have come to the conclusion that it is not entitled to the weight which the learned Judges who took part in those decisions attribute to it. The Legislature evidently, I think, judging from the section which they framed, considered that the power of executing a

(1) I. L. R., 18 All., 435 at p. 436.

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decree placed the holder of it in a position to exercise undue pressure over the judgment-debtor and enabled him to obtain terms too favourable to himself from the latter, whose interests needed protection at the hands of the Court which passed the decree. Therefore, it was resolved to enact the law now contained in section 257 A of the Civil Procedure Code (Act XIV of 1882). The question would naturally then present itself: In what enactment should such a provision of law find place? Not, I think, in the Code of substantive law relating to contracts. That Code deals generally with void agreements, but a provision that a particular agreement shall be void unless approved by a Court would naturally find its place in an enactment prescribing the procedure of the Court rather than in an Act dealing with general principles. At all events, it is not, I think, out of place in such an enactment. The argument based upon its position in a Procedure Code has, therefore, I think no substantial force. Mr. Scott put the case concisely when he said: In determining the meaning of a legislative enactment "you cannot let the scheme of the Code outweigh the expressed will of the Legislature." When considering the meaning of the language of section 257 A it is not, I think, out of place to contrast it with the language of the succeeding section. "An adjustment of a decree not certified to the Court shall not be recognised as an adjustment by a Court executing the decree" (section 258). "Every agreement for the satisfaction of a judgment-debt" (which provides better terms for the decree-holder than the decree gives him) "shall be void unless it is made with the sanction of the Court which passed such decree" (section 257 A). In instituting this contrast I do so with the recollection of the circumstances under which the language of section 258 was varied. It does not, in my opinion, detract from the force of the comparison. It is impossible, I think, to conceive that the Legislature intended to express the same meaning by such entirely different language. In short, if the section in question were found in an enactment other than a Procedure Code, it would be impossible, I think, to contend that it had the limited application ascribed to it by the Calcutta and Madras High Courts. Its position in a Procedure Code and in a chapter of that Code which is headed "of the execution of decrees" does

not, in my opinion, alter its meaning. If the language was ambiguous it would be permissible to resort to these aids to interpretation, but not, I think, when the language is plain. The Legislature, for reasons which seemed to it to be good, has declared that such agreements shall be void unless sanctioned by the proper Court. It is, I conceive, the duty of the Courts to give effect to that clearly expressed declaration, and not to explain it away.

I may add that the facts of this case show the undue advantage which grasping decree-holders would be in a position to obtain from their judgment-debtors in the absence of the provision which has been referred for our construction. It would be of little advantage to the latter to be protected from the Courts executing the decree against them if their judgment-creditors could obtain the full fruits of their undue pressure by regular suit.

We answer both questions in the affirmative. Costs costs in the case.

CANDY, J.:—If the first question is answered in the affirmative, then in my opinion the second question must also be answered in the affirmative.

On the second question I have but little to add to the remarks of the learned Chief Justice.

No doubt the arguments used by Mahmood, J., in *Ramghulam* v. *Janki Rai*[1]; by Garth, C. J., and Ghose, J., in *Jhabar* v. *Modan Sonahar*[2]; by Prinsep and Ghose, JJ., in *Hukum Chand* v. *Taharunnessa Bibi*[3] and by Muttusami Ayyar and Best, JJ., in *Juji* v. *Annai*[4] deserve the fullest consideration; but I agree with the learned Chief Justice at Allahabad[5] that where the Legislature has thought right to declare an agreement void, unless the Legislature limits the application of its enactment, Courts are bound to give effect to it. There is no such limitation to be found in section 257 A. Cases may occur where a merciful judgment-creditor may give time for the satisfaction of a judgment-debt by taking an instalment bond from his judgment-debtor and seeking no

(1) I. L. R., 7 All., at pp. 127 to 134.
(2) I. L. R., 11 Cal., at p. 672.
(3) I. L. R., 16 Cal., at pp. 507, 508.
(4) I. L. R., 17 Mad., at p. 383.
(5) I. L. R., 18 All., at p. 436.

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advantage to himself. On the other hand, cases may occur where the judgment-creditor armed with the decree may extort a bond from his judgment-debtor with onerous conditions. The Legislature must be taken to have had regard to these considerations when enacting the plain provisions of section 257 A. It was open to the Legislature in 1888 to amend section 257 A just as it amended section 258. It did not do so, and, therefore, we are bound by the plain words of the law.

As to the first question, it seems to me, on a comparison of the language of sections 257 A and 258, that whereas an adjustment of a decree under section 257 A may also fall within the terms of section 258, an adjustment under section 258 cannot fall within the terms of section 257 A unless it is an agreement which gives time for the satisfaction of the decree, or unless it provides for payment of something in execution of the decretal debt. To the argument of the learned Advocate General, that the bond in the present suit is an adjustment of the decree under section 258, there is an obvious answer. Granted, but it also falls within the terms of section 257 A. If so, the agreement is void. Not only are the requisites laid down in section 257 A, and the effect of the absence of the requisites, different, but the subject-matter is different. Section 258 would seem to apply to a satisfaction *in presenti pro tanto* of a decree. Illustrations of the section may be gathered from numerous reported cases: *e. g.* payment of money or delivery of grain, cattle or ornaments or such like, the decree-holder being satisfied with this compromise in satisfaction *pro tanto* of his decree. All that is necessary for such payment or delivery to be recognised by the Court executing the decree is that it must be certified. But section 257 A would seem to apply to an agreement for the satisfaction, *in futuro*, of a judgment-debt: the money is admitted to be due, and the parties agree as to the manner in which the money is to be paid. That agreement is the foundation of a new contract; but if the agreement gives time for the payment of what is admitted to be due, or provides for the payment of more than what is due under the decree, then so far the consideration fails, for such an agreement being void is not capable of being the foundation of any legal right.

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This distinction between the subject-matter of the two sections may not have been prominently brought out in some of the reported cases, but that it exists seems clear to me on a careful consideration of the language.

In the present case, the promissory note of 9th December, 1889, provided for payment of more than what was due under the decree. Therefore it was void. I would answer both the questions in the affirmative.

B. TYABJI, J.:—I concur and have nothing to add.

Attorneys for the plaintiff:—Messrs. *Matubhai and Jamietram.*

Attorneys for the defendant:—Mr. *Balkrishna V. N. Kirtikar.*

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Before Mr. Justice Strachey.

SORABJI CURSETJI SETT, PLAINTIFF, *v.* RATTONJI DOSSABHOY KARANI, DEFENDANT.*

1898.
April 12.

Jurisdiction—Letters Patent, 1865, *Cl.* 12—*Suit for land—Foreclosure suit—Transfer of Property Act (IV of* 1882), *Sec.* 85—*Parties to suit—Practice—Procedure.*

A suit for foreclosure is not a suit for land within the meaning of clause 12 of the Letters Patent, 1865, and the High Court of Bombay on its original side has jurisdiction to entertain such suits, although the property in question is situate outside the town and island of Bombay.

Holkar v. *Dadabhai C. Ashburner*(1) followed.

In a suit for foreclosure by a puisne mortgagee, the prior mortgagee should be made a party to the suit under section 85 of the Transfer of Property Act (IV of 1882). In a suit where a prior mortgagee was not a party, the Court at the hearing of the suit ordered that he should then be made a party.

Mata Din v. *Kazim Husain*(2) followed.

SUIT for foreclosure. The defendant resided at Sálsette, outside the jurisdiction of the High Court, and the mortgaged properties were all situate outside the jurisdiction.

* Suit, No. 40 of 1898.

(1) I. L. R., 14 Bom., 353. (2) I. L. R., 13 All., 432