

In this case there has been the final judgment and decree of the Court of Small Causes upon the whole matter in dispute in the suit, and to such a judgment and decree, section 20 of Act XIV of 1859, clearly applies. The Court is therefore of opinion that the Judge rightly decided that the plaintiff's application for a warrant in execution of the decree was not barred by lapse of time, though more than a year had elapsed from the date of the decree without any proceeding having been taken upon it.

1863.
November 23
S. A. No. 17
of 1863.

APPELLATE JURISDICTION (a)

Referred Case No. 18 of 1863.

SIVARÁMAIYAR against SAMU AIYAR.

In a suit on a bond it is for the plaintiff to prove the amount of the debt, and this will be done sufficiently in the first instance by proof of the execution of the bond. It is for the defendant to prove in answer, if he can, that such amount is less than the sum sued for.

CASE referred for the opinion of the High Court by R.B. Swinton, the Judge of the Court of Small Causes at Tanjore.

1863.
November 23.
R. C. No. 18
of 1863 .

No counsel were instructed.

The facts appear from the following.

JUDGMENT:—The question submitted for our decision is “whether, in a suit to recover on a bond, the burden of proving partial failure of consideration lay upon the defendant or upon the plaintiff?”

It was for the plaintiff to prove the amount of the debt in respect of which he sued. This, so far as his case was concerned, he did sufficiently in the first instance by proof of the execution of the bond. It was for the defendant to give evidence in answer, if he could, that the amount was less than the sum claimed by the plaintiff; and, in the absence of any such proof, the Judge rightly gave judgment for the plaintiff.

(a) Present: Scotland, C. J. and Frere, J

NOTE.—See S. A. No. 37 of 1865, Mad. S. J., 1855, p. 120.