1863. November 21. S. A. No. 156 of 1863.

defendant to be a holder on kánam, and the second his assignee. The twelve years had, according to the plaintiff's showing, not run. There is no valid distinction between the hostile title set up by the assignee and one set up by the person found to be the original tenant on kánam. Following therefore this latter case, which, moreover, appears to us to be consistent with the doctrine long established in Malabar that the holder on kánam who denies his janmi's title entirely forfeits his right to hold for twelve years, we dismiss this Special Appeal with costs.

Appeal dismissed.

APPELLATE JURISDICTION (*a*)

Referred Case No. 17 *of* 1863.

PANCHANÁDA CHETTI *against* RÁMAN CHETTI and others.

Where a Court of Small Causes delivered final judgment and decree on the whole matter in dispute and more than a year but less than three years had elapsed from the date of the decree without any proceeding having been taken upon it :—*Held* that Act XIV of 1859, Sec. 20 applied, and that the plaintiff's application for a warrant in execution of the decree was not barred by lapse of time.

1863. November 23. R. C. No. 17 of 1863.

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

No counsel were instructed.

The Court delivered the following

JUDGMENT : —The question submitted for the decision of the High Court is,

"Whether the period of limitation applicable to a decree of a Court of Small Causes constituted under Act XLII of 1860, is three years as laid down in Section 20, Act XIV of 1859(*b*), or the period of one year under Section 22 of the same Act."

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

(*b*) This section enacts that "no process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, decree or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree or order, or to keep the same in force within three years next preceding the application for such execution.

(*c*) This section enacts that no process of execution shall issue to enforce any summary decision or award of any of the Civil Courts not established by Royal Charter or of any Revenue Authority, unless some proceeding shall have been taken to enforce such decision or award, or to keep the same in force within one year next preceding the application.

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

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.

APPELLATE JURISDICTION (*a*)

Referred Case No. 18 *of* 1863.

SIVARÁMAIYAR *against* SÁMU 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.

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

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

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.