APPELLATE JURISDICTION (*a*).

*Referred Case No. 8 of 1866.*

TÁVASI TELAVAR *against* PALANI ANDI TELAVAR and 3 others.

Where one of several co-debtors satisfies the debt, his cause of action for contribution accrues against all at one and the same time, and, under Section 8 of the Civil Procedure Code, the contributories may all be included as defendants in one plaint. The decree, if in favor of plaintiff, should order payment separately by each defendant of the amount only of his just proportion of the debt.

CASE referred for the opinion of the High Court by J. H. Nelson, the Acting Judge of the Court of Small Causes of Madura. The suit was brought to recover the sum of Rupees 184-8-7, being money payable to plaintiff by defendants for money paid by plaintiff to the use of defendants. The facts of the case, as set forth in the declaration, were as follows :—On the 8th of August 1865 one Alagirisámy Naick recovered a judgment for Rupees 172-7-0 against plaintiff and defendants, in an action for debt. On the 17th of April 1866 the said Alagirisámy Naick obtained satisfaction of the judgment debt from the present plaintiff alone, who paid it in full.

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Plaintiff in the present action sought to recover four-fifths of this sum from those who were his co-defendants. The Judge doubted whether plaintiff could recover upon his declaration and referred the following question for the opinion of the High Court. " Where one of several joint judgment debtors is compelled to pay the whole of a judgment debt, can he sue his co-debtors jointly for the amount he has paid in excess of his own aliquot share? Or, must he sue each of them separately for the amount of the aliquot share which each is bound to contribute ?"

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—The question in this case is merely one of procedure. There is no doubt that the liability of co-debtors for contribution *inter se* is several and reciprocal.

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

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Each impliedly undertakes to indemnify his co-debtor or co-debtors respectively to the extent of his proper proportion of their joint debt, and where there are several co-debtors, as in the present case, they incur no joint liability for the proportionate contribution due from each.

But though the liability is individual and limited, still it arises out of the joint contract of all to pay the original debt, and the cause of action to enforce such liability accrues to the co-debtor, who pays the debt, against all at one and the same time.

We are, therefore, of opinion, after consideration of Section 8 of the Code of Civil Procedure, that the defendants in this case were not improperly included in one plaint, and that the suit ought to have been heard and determined on the merits. If decided in favor of the plaintiff, the decree should order payment separately by each defendant of the amount only of his just proportion of the debt which the plaintiff has been compelled to pay.

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APPELLATE JURISDICTION (a)

*Referred. Case No 11 of 1866.*

ARUNÁCHELLA PILLAI *against* APPÁVU PILLAI.

Plaintiff owed defendant a judgment debt. He paid the debt, but not through the Court. Defendant then fraudulently applied to the Court to execute the decree, and the Court, being debarred by Section 205 of the Code of Civil Procedure from recognising payments made otherwise than through it, executed the decree by making the plaintiff pay again the sum decreed. Plaintiff sued to recover the amount overpaid.

*Held* by the majority of the Court (Scotland, C. J. and Innes, J dissenting) that such a suit is not maintainable.

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July 9.
R. C. No. 11
of 1866

THIS was a case referred for the opinion of the High Court by F. M. Kindersley, the Acting Judge of the Court of Small Causes of Combaconum, in Suit No. 300 of 1866.

No Counsel were instructed.

The Judges delivered their opinions in the following order : —

(a) Present : Scotland, C. J., Bittleston, Holloway, Innes and Collett, J. J.