

RULES OF THE HIGH COURT OF JUDICATURE AT
MADRAS, PASSED OF THE 3RD OF AUGUST 1871.

1. A Respondent in an Appeal shall not be entitled to raise an objection to the decree or order in question unless he shall have filed in Registrar's Office a Memorandum stating such objection (properly amended) eight clear days before the day of hearing and shall not, without the leave of the Court for special cause, be heard in support of such objection, unless he shall have served a copy thereof on the Appellant or advocate or Vakil the same number of days before.

2. Every application by an Appellant for leave to file a Memorandum of an additional ground of appeal shall be made by Petition ten days before the day of hearing, and, when granted, the Appellant may not, without the leave of the Court for special cause, be heard in support of such ground unless he shall have served a copy thereof on the Respondent or his Advocate or Vakil eight clear days before.

3. It shall not be sufficient in a Petition or Memorandum of Appeal or Memorandum of Objection filed in an Appeal to state as a ground of objection that the decision appealed from is contrary to law or usage, or that there has been substantial error or defect in the procedure or investigation of the case, or to the like effect : but the Petition or Memorandum shall set forth specifically the error of law, breach of rule, or defect in procedure or investigation meant to be relied upon : and an Appellant or Respondent will not be permitted to raise at the hearing of the Appeal any legal objection not so set forth.

4.

No Petition or Memorandum of Appeal or of Objection which is general in character and which a general statement without setting forth any other ground of appeal or objection shall not be received in the Registrar's Office on the Appellate or Appellate Sides of the Court.

5. No Petition or Memorandum of Special Appeal or of Objection in a Special Appeal which may appear to the Registrar, in his absence, the Deputy Registrar, to be defective in not stating

specifically any objection which is an admissible ground of Special Appeal under Section 372 of Act VIII of 1859 shall be received and referred until a Judge shall so order.

6. Every such Petition or Memorandum of Appeal or Objection shall be referred by the Registrar or, in his absence, the Deputy Registrar, for the consideration and order of a Judge unless the party by whose behalf it is presented acquiesce in the opinion of the Registrar, Deputy Registrar and desire to amend it—in which case the Petition or Memorandum shall be returned for correction by substituting an admissible ground of objection, and the time allowed for that purpose be three clear days.

7. Every such reference shall be set down for hearing and determination by the single Judge whom the Chief Justice may, from time to time, appoint to sit for the purpose, and his determination must be done up in the form of an Order of Court under Section 25 of Act XXI of 1861. Notice of the day of hearing shall be given by affixing a copy of the references to the public notice boards at the Court-house two days before the day of hearing.

8. Rules 5, 6 and 7 shall come into operation on the 20th October next.

C. H. SCOTLAND,	}	<i>Chief Justice.</i>
W. HOLLOWAY,		
L. C. INNES,	}	<i>Judges.</i>
J. KERNAN,		
J. R. KINDERSLEY,		

“ viz. Rupees 100 on the 30th Anni Sukula and interest on
 “ the whole of the principal ; 100 Rupees on the 30th Chi- 1870.
 “ threi Pramadutha with interest as above, and 100 Rupees October 28
 “ on the 30th Mauai next with interest up to that date. If Il. C. No 42
 “ any of the previous instalments fail, I shall sell the lands of 1870.
 “ according to the then price and pay you without any
 “ reference to the subsequent instalments, and shall make up
 “ the deficiency if any. Thus, I have executed this pledge
 “ bond at my own free will.”

(Signed) MOOTHIROOLANDI CHETTY.

Agreement.

“ I the debtor agree that if the terms of this bond were
 “ not properly acted up to, you shall collect the debt men-
 “ tioned in it in a summary way under Section 53 of the
 “ Registration Act of 1866.”

(Signed) MOOTHIROOLANDI CHETTY.

The suit was instituted on July 11th, 1870, within one year from the date when the first instalment became due, and the date fixed for payment of second instalment has also expired. The question is whether the summary remedy is applicable to a bond by the terms of which the whole debt becomes due by the non-payment of one instalment. My own opinion was that the Section 53 is applicable, but from a case reported in the *Bombay High Court Reports, Volume VI, page 65*, it appears that the High Courts of Calcutta and Bombay have ruled that this section does not apply to agreements like this. The reasons given are that other evidence besides the bond would be necessary, and the summary remedy ought to be confined to the two classes of agreements mentioned in Section 53. I have, therefore, referred the question for the opinion of the High Court :—

Whether the summary remedy provided in Section 53 is applicable to the present case or not.

No Counsel were instructed.

The Court delivered the following judgment :—

SCOTLAND, C. J.—I am of opinion that the Summary remedy, provided by Section 53 of Act XX of

1870.
 October 23.
 R. C. No. 42
 of 1870.

1866 is not available to the plaintiff for the recovery of the whole amount secured by the bond. But I do not rest this opinion at all upon the ground that the default in payment of the instalment by which the whole amount became payable is a matter for proof by evidence *dehors* the bond. I am not able to agree in the view of the learned judges who

Petition of Ganapat Manikji Pail, VI, Bombay High Court Reports, 64.

decided the case marginally noted; that a distinction in that respect exists between a default by non-payment of any instalment on a stated day by which more of the debt than the amount of the instalment becomes payable, and a default by non-payment of the whole secured debt when payable at a single date. The latter default is as much a point for proof by extraneous evidence as the former. I therefore see no reason why the allegation of default in the petition should not be thought as sufficient in the one case as in the other.

The sole ground of my opinion is that the present case is not strictly within Section 53. Its terms appear to me to confine the summary remedy to obligations making the whole debt payable at one date or by instalments at several dates, and in the case of an obligation of the latter description to the recovery of only the amount of each instalment as it falls due. A summary remedy of this nature must be strictly applied.

HOLLOWAY, J.—I do not dissent from the above judgment.