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

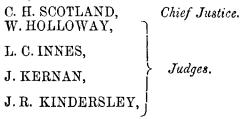
- 1. A Respondent in an Appeal shall not be entitled to raise an ction to the decree or order in question unless he shall have filed in Registrar's Office a Memorandum stating such objection (properly mped) eight clear days before the day of hearing and shall not, withthe leave of the Court for special cause, be heard in support of each ction, 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 Memoranof an additional ground of appeal shall be made by Petition ten days before the day of hearing, and, when granted, the Appellant not, without the leave of the Court for special cause, be heared in ort of such ground unless he shall have served a copy thereof on the ondent or his Advocate or Vakil eight clear days before.
- 3. It shall not be sufficient in a Petition or Memorandum of Apara or Memorandum of Objection filed in an Appeal to state as a ound of objection that the decision appealed from is contrary to law usage, or that there has been substantial error or defect in the procese or investigation of the case, or to the like effect: but the Petition Memorandum shall set forth specifically the error of law, breach of se, or defect in procedure or investigation meant to be relied upon: and an Appellant or Respondent will not be permitted to raise at the aring of the Appeal any legal objection not so set forth.

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

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

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

- 6. Every such Petition or Memorandum of Appeal or Obje shall be referred by the Registrar or, in his absence, the Deputy I trar, for the consideration and order of a Judge unless the party by whose behalf it is presented acquiesce in the opinion of the Regist. Deputy Registrar and desire to amend it—in which case the Petiti Memorandum shall be returned for correction by substituting a missible 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 deter nation by the single Judge whom the Chief Justice may, from time time, appoint to sit for the purpose, and his determination must be d up in the form of an Order of Court under Section 25 of Act XXI 1861. Notice of the day of hearing shall be given by affixing a 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.



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of 1870.

"viz. Rapees 100 on the 30th Anni Sakula and interest on the whole of the principal; 100 Rupees on the 30th Chithrei Pramadutha with interest as above, and 100 Rupees on the 30th Mausi next with interest up to that date. If any of the previous instalments fail, I shall sell the lands 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 mentioned in it in a summary way under Section 53 of the Registration Act of 1866."

(Signed) MOOTHIROOLANDI CHETTY.

The stit 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 addremedy 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 derivered the following judgment :-

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

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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

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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.