

1863.  
Nov. 2.

Special Appeal No. 29 of 1863.

YEKNA'TH BA'BA'JI.....Appellant.  
GULÁBCHAND KAHÁ'NJI.....Respondent.

*Admission by Defendant—Onus of Proof—Material Allegations—  
Traverse—Service of Summons.*

Where a defendant admits the execution of a document upon which he is sued, the *onus* lies on him to get rid of the effect of such admission.

A defendant must be taken to admit all material allegations in the plaint which he does not traverse.

In an action against a firm the names of the partners should be specified in the plaint, and a summons served on one or more of its members if resident within the jurisdiction.

THIS was a Special Appeal from a decree of R. F. Mactier, Judge of the district of Ahmednagar. The suit was originally instituted by the appellant, Yeknáth, in the Court of the Principal Şadr Amín of Ahmednagar, against the defendants, described as the firm of Gulábchand Kahánji, trading by means of their *munims*, Gañesh Dhanji and Khushálchand Kahánji, to recover the sum of Rs. 4,794, due on a promissory note alleged to have been passed to the plaintiff by Gañesh Dhanji, as one of such *munims* of defendants' firm.

The *munim* Gañesh Dhanji conducted the defendants' case, and on their behalf admitted the writing of the note, but stated that it was nothing more than a rough draft, and denied that there was any consideration for it.

The Principal Şadr Amín found that the defendants admitted the note, but were unable to prove that it was only a draft, or to substantiate the allegation of want of consideration, and further that it was proved that they had tried to compromise the claim. He gave a decree for the amount claimed, with costs.

On appeal, the Judge, R. F. Mactier, reversed this decree. He held that there was no sufficient evidence on the part of the plaintiff to support the decree; that neither the execution of the note nor payment of consideration was proved; and further that it was not shown that Gañesh Dhanji, the alleged maker of the note, had any connection with the defendants' firm.

A special appeal was thereupon preferred by the plaintiff.

The appeal was argued before FORBES, WESTROPP, and TUCKER, JJ.

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YEKNA' TH  
BA'BA'JI

v.

GULÁ'BCHAND  
KAHA'NJI.

*Dhiraajál Mathurádás*, for the appellant, contended that admission of the writing was sufficient to support the decree of the Principal Šadr Amín, in the absence of any evidence as to the circumstances under which the writing was made, and that the Judge had placed the burden of proof on the wrong party. The allegation that Gañesh Dhanji was a *munim* of the firm of Gulábchand Kahánji not being traversed by the defendants, the Principal Šadr Amín properly treated it as not in issue, and the District Judge should not have reversed his decree upon the ground that the fact of Gañesh Dhanji's munimship had not been proved.

*Dádábhái Frámji* for the respondents.

FORBES, J., delivered judgment:—The Court not finding it denied that Gañesh Dhanji was one of the *munims* of the firm of Gulábchand Kahánji at the date of the document, and finding it admitted that it is in the handwriting of Gañesh Dhanji, is of opinion that the *onus* lay on the defendants to get rid of the effect of such admission, and, the Judge not having come to any conclusion on the special facts set forth by the defendants for that purpose, reverses the Judge's decree, and remands the cause for re-trial on its merits.

The Court has further to remark that, the suit being instituted against the firm, the names of the members of the firm should have been mentioned in the plaint, and that they, or one of them, should have been personally served with a summons if within the jurisdiction.

*Decree reversed.*