made and lost in modern times." In this manner juries were directed to presume a grant, till Act 2 & 3 Wm. IV., c. 71, commonly called the Prescription Act, was passed.

1865.
ANA'JI DATTU'SHET *v.* MORU'SHET BA'PU'SHET.

The same reasoning is applicable to this case. Reg. V. of 1827, Sec. I., Cl. 1, provides that "whenever lands, houses, hereditary offices, or other immoveable property have been held without interruption for a longer period than thirty years, whether by any person as proprietor, or by him and his heirs, or others deriving right from him, such possession shall be received as proof of sufficient right of property in the same." And Act XIV. of 1859 contains no provision for these cases, which are, therefore, to be governed by the Regulation. If the time of enjoyment necessary to confer a right to an easement in India ought to be shortened, it must be done by the Legislature.

We, therefore, amend the decree of the Ṣadr Amín, by reversing so much thereof as threw out the plaintiff's claim to prevent the defendant from using the land in dispute.

Appeal allowed.

Special Appeal No. 92 *of* 1866.

June 20.

The Heirs of HUSEN BEG BA'I kom TA'J MUHAMMAD.....*Appellants.*

A'KU'BA'I *alias* TA'RA' NA'YAKI'N .....*Respondent.*

Account stated—Mortgage—Consideration.

An agreement reciting that, in consideration of the care which the plaintiff took of the defendant and her property during her infancy, and of the instruction given to her, for which the plaintiff expended her own money, the defendant had mortgaged her house to the plaintiff; and stipulating that, in the event of the defendant going to live with any man, and similarly after her death, the house should become the plaintiff's property:—*Held* good in law, and in substance an account stated, with a mortgage to secure the amount due; and the usual decree for redemption made: reversing the decrees of the courts below, which threw out the plaintiff's claim.

THIS was a special appeal from the decision of C. B. Izon, Acting Assistant Judge of Puná, in Appeal Suit No. 89 of 1864.

1865.
HUSEN BEG BA'I'S HEIRS v. A'KU'BA'I.

Husen Beg Bái sued to recover possession of a house in Púná, upon an agreement, signed by the defendant, A'kúbái, dated Mágh Shuddha 1st, Shake 1782 (February 1861), which provided that, in consideration of the care which the plaintiff took of the defendant and her property during her infancy, of the instruction given to her in dancing and singing, for which the plaintiff expended her own money, and in consideration of the payment of certain debts due by the defendant, which expenses amounted in all to Rs. 550, the defendant, being about to proceed to Bombay, agreed to secure the said sum on the defendant's house ; and stipulated that, in the event of the defendant returning, the plaintiff should allow her to live in the house ; and further that in the event of the defendant going to live with any man, or in the event of her death, the house should become the plaintiff's property, and the defendant should not alien it to any one else. On the 29th of May 1863, A'kúbái did go to live with a man : hence the claim.

A'kúbái answered that she had not executed the agreement, which was forged by the plaintiff, who was her servant; and that she had mortgaged the house to one Muhammad Khán.

The Munsif of Púná, on the 20th of February 1864, threw out the claim, on the grounds that, besides the two witnesses and one writer, other witnesses should have been brought to prove the agreement ; and that proof of consideration had not been given.

The plaintiff appealed to the District Court, on the ground that the Munsif's decree was opposed to the evidence; and the following issues for decision were laid down by the Assistant Judge: (1) Was the proof of the deed sufficient; (2) Was proof of consideration required; and, if so, was sufficient consideration proved, or not; (3) If so, is the agreement such as to entitle HusenBeg Bái to recover the amount of her claim. No further issue was sought by either party.

The following decision was recorded, on the 24th of October 1864 :—

1865.

HUSEN BEG BA'I'S HEIRS v. A'KU'BA'I.

"My finding on the first point is, that proof of the document, *i.e.*, of its execution, was sufficient. * * * On the second point, I find that proof of the consideration was requisite; and that no sufficient consideration has been proved.

"It appears, from her own statement and other evidence, that appellant was a kind of servant of A'kúbái, intrusted by A'kú's mother with the duty of preparing A'kú for her trade as nách-girl. Now the evidence for the consideration relied on by appellant amounts to this, that Husen Beg Bái used to pay people for services and goods supplied; but I cannot presume that she paid her own money for this. Probably the girl's mother gave her money for the purpose. I think we may presume that her motives in educating the girl were not purely charitable, and that she had received some payment for her services. I cannot find, therefore, that sufficient consideration has been proved.

"No finding is requisite on the third point. I must, however, express my doubt, whether the agreement would stand even if some sort of consideration were proved. I affirm the decree of the lower court, with costs on appellant."

The case was heard before COUCH and WARDEN, JJ.

Shántárám Náráyan for the appellant:—The court below erred in law: in framing an issue as to whether there was a consideration for the agreement, the same not having been disputed, and also in weighing the adequacy of the consideration, the same not being examinable. The Judge likewise erred in entertaining doubts as to whether the agreement would stand, even if a consideration were proved. The *onus* was wrongly thrown upon the appellant to prove a consideration, when services were acknowledged in the agreement,—which was sufficient; and to establish that the money expended by the appellant was her own.

Pándurang Balibhadra, for the respondent:—The agreement was against public policy, as its tendency was to induce the defendant to lead a life of prostitution; and if the agreement was not absolutely illegal, still it was for a bygone consideration, which was insufficient in law to support a promise to pay.

1865.

HUSEN BEG BA'I'S HEIRS v. A'KU'BA'I.

COUCH, J., said that no illegal consideration was shown by the contract, or disclosed by the evidence. The agreement amounted in substance to an account stated, and a mortgage of the defendant's house to secure the amount found due.

PER CURIAM:—The Court reverses the decrees of the Munsif and the Assistant Judge; and decrees possession of the house to the plaintiff; unless the defendant, within six months from this date, pay to the plaintiff Rs. 550, with interest at nine per cent. from this date till payment: in which case the defendant is to remain in possession of the house.

Appeal allowed.

Nov. 16.

Special Appeal No. 425 of 1865.

KRISHNA'JI A. NIMKAR .....*Appellant.*
VISHNU A. NIMKAR and another.....*Respondents.*

Judgment for refusing to answer questions—Act VIII. of 1859, Sec. 126.

A judgment passed against a plaintiff, under Sec. 126 of Act VIII. of 1859, was reversed by the High Court in special appeal; as there was nothing on the record to show that the party refused "to answer any *material* question relating to the suit."

THIS was a special appeal from the decision of A. T. Crawford, Senior Assistant Judge of the Konkaṇ, confirming, in appeal, the decree of the Munsif of Anjanvel.

Krishṇáji brought the suit for a separation of his share in a khotí village: and the Munsif passed judgment against him, under Sec. 126 of the Civil Procedure Code, on the ground that he would not answer the questions put to him by the Court, and that he became abusive to the defendants, and behaved like a person demented.

The case was heard before NEWTON and JANA'RDAN VA'SUDEVJI, JJ.

Vishvanáth Náráyaṇ Mandlik for the appellant.

No one appeared for the respondent.

NEWTON, J.:—In this case the Munsif passed judgment against the appellant, under Sec. 126 of the Code; but there