

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 Konkan, confirming, in appeal, the decree of the Munsif of Anjanvel.

Krishnaji brought the suit for a separation of his share in a khoti 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'EDAN VA'SUDEVI, JJ.

Vishvanath Narayan 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

is nothing in the judgment, or on the record, to show that the plaintiff refused to answer any *material* question. The plaintiff appears to have been guilty of a gross contempt of court, for which it is to be regretted that the Munsif awarded so improper a punishment.

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et al.

The decrees of the lower courts are reversed; and the suit remanded for a new trial on the merits: all costs hitherto incurred to be borne by the appellant.

Appeal allowed.

Special Appeal No. 713 of 1864.

Feb. 2.

NARA'PPA' bin A'PPA' HEGDI.....*Appellant.*

GAPA'YA' bin KAPA'YA'*Respondent.*

Evidence—Declaration in Pleadings—Inspection of Records—Act VIII. of 1859, Sec. 138.

Held that declarations made in pleadings, in suits instituted before the Code of Civil Procedure came into operation, are inadmissible as evidence of the facts stated therein.

Held, also, that a Civil Court, which inspects the record of another case, under Sec. 138 of Act VIII. of 1859, can only use as evidence such documents as are otherwise unobjectionable, and admissible for or against either of the parties to the suit.

THIS was a special appeal from the decision of the Acting District Judge of Cánará.

The case was heard before FORBES and TUCKER, JJ.

Dhirajlál Mathurádás for the appellant.

Shántáram Náráyan for the respondent.

PER CURIAM :—The Court is of opinion that the declarations made in complaints or pleadings, in suits instituted prior to the introduction of the Code of Civil Procedure, are inadmissible as evidence of the facts stated therein; although they are admissible to prove their own existence, or the institution of a suit, or that certain facts were in issue between the parties to that suit: Taylor on Evidence, 3rd Edn., p. 1401, § 1560; *Boileau v. Rutlin*, 2 Exch. 665. The case would be different if the pleadings had been verified, as they are now required to be by the Civil Procedure Code.