

*Referred Case.*1868.
Jan. 29.JA'FAE ALI' NIZA'M ALI' v. AHMED ALI'
IMA'M HA'IDARBAKSH.*Muhammadan Law—Agreement—Consideration—Relationship—Parol Evidence.*

By Muhammadan law an agreement to pay an annuity, though signed and registered, has not the effect of a deed in English law, but requires a consideration to support it.

The relationship existing between cousins is not a sufficient consideration to support such an agreement.

Parol evidence is inadmissible to show that in an agreement to pay an annuity there was a consideration for the granting of the annuity different from that expressed in the agreement.

QUESTIONS and case referred for the decision of the High Court, under Sec. 22 of Act XI. of 1865, by Gopálráv Hari Deshmukh, Judge of the Court of Small Causes at Ahmedábád:—

“I. Whether or not the agreement, a copy of which is annexed for perusal, has the same legal efficacy as a deed in English law, *i.e.*, there is no necessity for receiving proof of consideration.

“II. Whether or not the relationship mentioned is a sufficient consideration.

“III. If not, whether parol evidence can be admitted to show that there was some other consideration not expressed in this agreement.

“2. The plaintiff has brought an action against the defendant on an agreement in which the defendant promises to pay the plaintiff Rs. 12 per annum for his maintenance, because he is a cousin of the defendant. It is stated that this annuity was to be paid hereditarily from a larger amount of Rs. 200, which the defendant draws from the Nawáb of Baródá, and should this source fail, from other means. The defendant, who is the Mútavalli of the celebrated Rozá of Sháh Alam, enjoys a yearly income of Rs. 10,000 from lands and cash allowances.

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"3. The defendant admits the execution of the agreement, but pleads want of consideration. He states that the plaintiff has no right to any portion of the amount of Rs. 200 which he draws, and the distant relationship is not a sufficient consideration.

"4. The plaintiff replies that the consideration of relationship is good and sufficient, and even if it were not so, he can produce other evidence to show that the agreement was founded upon consideration other than that expressed in the said agreement.

"The agreement is written upon stamped paper, and bears the defendant's signature, and, among other attestations, the Kázi's seal, and is registered, though not in the presence of the defendant, because the law which prevailed at the time did not require it. * * *

"The plaintiff cites in support of his case: "Manual of the Law of Evidence for India," Ch. V., para. 19; Norton on Evidence, p. 47, Sec. 94; *Annágumbala Chetti v. Krishnasvámi Nayakkan (a)*, *Dádá Honáji v. Bábáji Jagushet (b)*.

"The defendant has applied to me to refer the above questions to the High Court, and, notwithstanding the authorities quoted by the plaintiff, which are not all in point, I do not think that these questions can be considered as settled, though my opinion on them is that the agreement of the nature produced in this case has the efficacy of a sealed deed, and that the relationship spoken of in it is sufficient consideration, and that the parol evidence which the plaintiff offers cannot be taken."

The material portion of the agreement alluded to above was as follows:—

"You and I are cousins, the descendants of Sháh A'lam. I am in receipt of an annual allowance from the Nawáb of Barodá. Out of this I will go on paying you Rs. 12 every year. I and my descendants will continue to pay as long as there shall exist a descendant of yours. And even if I do not get the allowance from the Nawáb of Barodá, I will still

(a) 1 Mad. II. C. Rep. 457.

(b) 2 Bom. H. C. Rep. 38.

go on paying the said sum of Rs. 12 every year. In consideration of your being my cousin, I have given this document to you for your maintenance.

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Dhirajlál Mathurádás for the plaintiff.

Marriott (with him *A'tmárám Jagannáth*) for the defendant.

The following authorities were cited in the course of the argument :—

Taylor on Ev., Sec. 1035 ; *Gale v. Williamson*, 8 M. & W. 405 ; *Peacock v. Monk*, 1 Ves. Sen. 128 ; Norton on Ev., Sec. 647.

PER CURIAM (COUCH C.J., and NEWTON, J.) :—The Court decides, upon the first question, that the agreement has not the same efficacy as a deed according to English law.

On the second, that the relationship mentioned in the agreement is not a sufficient consideration.

And on the third, that evidence cannot be admitted that there was a different consideration from that expressed in the agreement.



Special Appeal No. 699 of 1867.

Jan. 30.

DA'DU valad ANSAR SA'HEB *Appellant.*

BA'LGOUA' bin SHANKARA'PPA' *Respondent.*

Month—British Calendar Month—Act VIII. of 1859, Sec. 230.

The word “month” in Sec. 230 of the Code of Civil Procedure means a month according to the English calendar. An applicant under that section has a clear calendar month, exclusive of the day of dispossession, within which to prefer his application.

THIS was a special appeal from the decision of W. Sandwith, Acting Judge of the District of Kaládghi, in Appeal No. 85 of 1867, reversing the decree of the Munsif of Bijápúr.

The plaintiff, Balgoudá, under Sec. 230 of the Code of Civil Procedure, applied to recover possession of a *judi* field, No. 112, measuring 25 acres 34 chains, alleging that it was