

*Special Appeal No. 17 of 1868.*1868.
April 3.MOTI KAHAN'JI *Appellant.*DIPCHAND VIRCHAND *Respondent.**Acknowledgment of Debt—Sámádaskat—Onus Probandi—Reg. V. of 1827, Sec. 9—English Law—Alteration of a Writing after Signature.*

Where the plaintiff sued to recover money lent, relying upon a *Sámádaskat*, or acknowledgment of debt given by the defendant :

Held that Sec. 9 of Reg. V. of 1827 contained the rule of law applicable to the case, and that the *onus* lay on the defendant to prove that he had not received full consideration for the acknowledgment of indebtedness which he had subscribed.

THIS was a Special Appeal from the decision of C. G. Kamball, Judge of the District of Súrat, in Appeal No. 121 of 1867, confirming the decree of the Munsif of Súrat.

The plaintiff sued to recover money alleged to have been lent to the defendant, and produced a written acknowledgment of indebtedness, signed by the defendant in his (the plaintiff's) account book.

The defendant pleaded want of consideration, and denied his indebtedness. He also alleged that the acknowledgment had been altered after he had signed it.

The Munsif threw out the plaintiff's claim, finding that he had not proved that any consideration had been given for the acknowledgment.

The District Judge agreed with the Munsif. In his judgment he said—"I need make no observation on the second point (whether the Munsif was wrong in casting the burden of proof in respect of the consideration on the plaintiff), for it is a settled rule that when a man seeks to enforce a simple contract, he must, save in the case of bills and notes, which are an exception to the rule, aver that it was made on good consideration, and must make good that allegation by proof."

The case came on for hearing before TUCKER and GIBBS, JJ.

Shántárám Náráyan, for the appellant :—The Court below was wrong in applying the rule of English Law to the

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present case, which is governed by Sec. 9 of Reg. V. of 1827. A written acknowledgment was made by the defendant in the plaintiff's book, and the *onus* lay on the defendant to show that he had not received full consideration.

PER CURIAM:—The Court is of opinion that the Judge was in error in deciding that it lay upon the plaintiff to prove that consideration had been received. Reg. V. of 1827, Sec. 9, is the law which governs the case, and this declares that it is incumbent on the defendant to show that a full consideration has not been received. The defendant can establish this either by direct testimony, or by the facts he may elicit by cross-examination of the plaintiff's witnesses. In the present suit the defendant pleaded that the *sāmādaskat*, or memorandum on which the plaintiff sued, had been tampered with, and altered since he signed it, and the Munsif found that the execution of the *sāmādaskat*, as it now stands, was not proved. The District Judge should have inquired and decided whether the acknowledgment of debt had been altered, subsequent to the defendant's signing it, without the assent of the defendant, as in that case the plaintiff will not be entitled to recover, and it will be unnecessary to enter upon the question of consideration.

The Court reverses the decree of the District Judge, and remands the appeal to the lower appellate court, for a retrial on the merits, with reference to the instructions contained in this judgment. Costs in all courts to be appor- tioned at the final decision.

Decree reversed and suit remanded.

NOTE.—As to the nature of an account stated see *Irving v. Veitch*, 3 M. & W. 107.