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the limit of the defendant's duty in such a case is the measure of the plaintiff's right. He cannot insist on a restoration of such and such rupees; he can insist only on being paid their exact value in other rupees. This is essentially compensation, and corresponds more exactly to the original sense of the word than when this is extended to a claim or decree for damages for the loss occasioned by deprivation of the property until it, or its value was given back to the plaintiff as distinguished from the equivalent for the property itself. The compensation, however, for the money wrongly seized and for the loss of gain or interest upon it may blend in a single claim for compensation. In either case, the limitation is, we think, provided by article 29. We, therefore, reverse the decree of the Subordinate Judge in appeal, and restore that of the Court of First Instance with costs throughout on the respondent.

*Decree reversed.*

## APPELLATE CIVIL.

*Before Mr. Justice West and Mr. Justice Nánabhái Haridás.*

September, 27

GANGA'DHAR SAKHA'RAM, PLAINTIFF, v. MA'HÁDU SANTA'JI,  
DEFENDANT.\*

*Dekhan Agriculturists' Relief Act, XVII of 1879, Section 47—The Code of Civil Procedure (XIV of 1882), Section 525—Construction—Arbitration award—Conciliator's certificate.*

Where a matter has been referred to arbitration, without the intervention of a Court of justice, by parties one of whom is an agriculturist, and an award has been made thereon, any person interested in the award may, without obtaining the conciliator's certificate, apply for the filing of the award under section 525 of the Code of Civil Procedure, the provisions of which are not superseded by section 47 of the Dekhan Agriculturists' Relief Act, 1879.

THIS was a reference under section 617 of the Code of Civil Procedure (XIV of 1882) made by Ráo Sáheb V. J. Gánu, Subordinate Judge (Second Class) of Wái, through the Special Subordinate Judge and Special Judge under the Dekhan Agriculturists' Relief Act, 1879. The Subordinate Judge (Second Class) stated the case thus:—

\* Civil Reference No. 40 of 1883.

“The parties referred a matter in dispute between them, without the intervention of a Court, to the arbitration of a third person, who was not appointed a conciliator under the Dekkhan Agriculturists' Relief Act, XVII of 1879. After an award was made, Gangádhār Sakhárám Pánshe applied to this Court under section 525 of the Civil Procedure Code that the award be filed. The agriculturist debtor, who was produced by the applicant, showed no cause why the award should not be filed. The conciliator's certificate mentioned in sections 46 and 47 of the Relief Act, XVII of 1879, is not produced, and the applicant refuses to produce it. The point which arises is whether the Court can entertain the application unless the applicant produces the conciliator's certificate in reference thereto.

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“Section 47 of the Relief Act runs as follows :—

“No suit, and no application for execution of a decree passed before the date on which this Act comes into force, to which any agriculturist residing within any local area for which a conciliator has been appointed is a party, shall be entertained by any Civil Court unless the plaintiff produces a certificate in reference thereto obtained by him under section 46 within the year immediately preceding.”

“It is admitted that the agriculturist who is a party to the present case resides within a local area for which many conciliators have been appointed.

“It is clear that the application under section 525 does not come within the applications referred to in section 47. An application under section 525 is not called a suit. Apparently, therefore, section 47 of the Relief Act does not apply to the case of an application under section 525 of the Civil Procedure Code. In reality, however, the application is a suit, and even something more than a suit, ordinarily instituted under Chapter V of the Civil Procedure Code. The application is to be numbered and registered as a suit (section 525). The moment the application is granted the award is changed into a decree, against which no appeal lies and which cannot be revised by the supervising authorities appointed under the Relief Act. Every decree in an ordinary suit under Chapter V is liable to revision either on

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appeal or under Chapter VII of the Relief Act. Evidently the decree, which is founded on the award, is exempted from all kinds of revision, because it is the result of parties' own free and voluntary acts. In the present case one of the parties is an agriculturist. In the eye of the law (Act XVII. of 1879) he is not competent to act independently and is not able to take care of himself. Hence the remedial measure was enacted to save and protect him from the evil effects of his past improvidences and errors, and to enable him to stand upon his own legs in future. In the bringing about of the award in the present case there was none of the protection intended for the agriculturist available. The Legislature which enacted the remedial measure could never have intended that a dispute in which the agriculturist was interested should be disposed of otherwise than in the way pointed out by the Relief Act. From the provisions of the conciliation chapter it is clear that no dispute in which an agriculturist is interested was intended to be excluded from its operation; and the provisions of sections 12 and 15 of the Relief Act seem to me to refer only to proceedings after the institution of a suit.

“From the section 74 of the Relief Act it appears that the special provisions are to prevail where they are inconsistent with the general provisions of the Civil Procedure Code.

“If it should be held that an application under section 525 is not a suit, a wide door would be opened to fraud, the very evil which it was intended to guard against would result, and the object of the Relief Act would be frustrated to that extent. I therefore hold, not, however, without a reasonable doubt, that the application under section 525 of the Civil Procedure Code is a suit for the purposes of the Relief Act, and that the Court cannot entertain it unless the applicant produces the certificate mentioned in sections 46 and 47 of Act XVII of 1879.”

In forwarding the reference from the Subordinate Judge of Wáí, Ráo Bahádur M. G. Ránade, Special Subordinate Judge, said :—

“No private arbitration award can be filed under section 525 if one of the parties thereto be an agriculturist and the award is made by arbitrators who have not been appointed conciliators under

Act XVII of 1879. It is true an application under section 525 is not a suit, though for convenience' sake such an application to file an award is to be registered as a suit. If it is not a suit, it is clear that it does not fall under the suits and applications for execution referred to in section 47 of Act XVII of 1879. Looking, however, to the reason of the rule, it is at the same time clear that if such applications to file private award were entertained by the Civil Courts, they would *pro tanto* defeat the main purpose of this protective legislation. The legislation, having provided an express machinery for promoting private compromises in cases where agriculturists are parties, must be understood as circumscribing by this special provision the general scope of section 525 of the Code in regard to the protected class. Besides, though the application to file an award is not a suit, the award when filed has the force of a decree. The precautions deemed necessary to secure responsible work and prevent fraud presuppose that the general law is controlled by the special law. Section 74 of the Relief Act expressly directs that the provisions of the Civil Procedure Code shall be followed, but there is a saving clause limiting this application to such an extent as is not inconsistent with the provision of the Relief Act. This provision, it is to be noted further, applies not only to suits but to all proceedings before Subordinate Judges. The provisions of section 525 are not to some extent consistent with those of Chapter VI. of the Relief Act and to that extent Chapter VI must be followed in place of section 525. I am therefore of opinion that an application to file awards in regard to agriculturist parties, if made by persons who are not conciliators, cannot be entertained by the Subordinate Judges in the district to which the Act applies."

Dr. Pollen, the Special Judge, in submitting the proceedings to the High Court said:—

"Reading together sections 39 to 47 of the Relief Act, it is clear that the intercession of a conciliator is necessary in some form or other before an agriculturist can be made liable in any proceeding in any Civil Court within whose local jurisdiction the system is in force."

There was no appearance on behalf of any party in the High Court.

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WEST, J.—In this case the Subordinate Judge of Wái has referred the question of whether he is at liberty to file an award made in a private arbitration under section 525 of the Civil Procedure Code. He thinks he is not, because<sup>2</sup> in the eye of the law (Act XVII of 1879) he (the agriculturist debtor) is not competent to act independently and is not able to take care of himself." But section 15 of the Act expressly provides for a reference to arbitration in order to settle the amount due in a case which would ordinarily be dealt with under section 12. There cannot, therefore, have been any distrust of arbitration as such in the mind of the Legislature in passing the Act. Nor is it conceivable that the debtor who may join in nominating arbitrators under section 15 of the Act should not be "able to take care of himself" when submitting to arbitration without the intervention of the Court. If a creditor and debtor cannot define their mutual relations by the mediation of persons in whom they have confidence, still less should they be allowed to do so unaided, and thus the settlement of accounts would be no settlement unless made by a Court. The foundation would thus be laid for universal litigation, but this is so generally disapproved that it cannot without an express declaration be supposed to have formed a part of the policy of the Legislature in this particular instance. The Code of Civil Procedure and the Dekkhan Agriculturists' Relief Act being within the territorial range of the latter statutes in *pari materia*, must be construed together so as to give effect so far as possible to the provisions of each. Another general principle is that exceptional provisions are not to receive a development to all their logical consequences contrary to the general principles of the law. When these principles are applied, there is nothing to be found which prevents parties from resorting to friendly arbitration instead of to the Court, or to prevent the filing and if need be the enforcement of an award thus obtained. The Subordinate Judge, therefore, should file the award in the present instance, no cause being shown against it.