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That section provides that no "writ or process shall be sued forth or prosecuted * * * unless with the consent of the Governor of Bombay in Council first obtained." The expression "sued forth," it is contended, means "to sue for and to obtain," and that, therefore, the institution of the suit in its inception was void, and the consent subsequently obtained did not cure the defect. The construction thus sought to be put upon the expression "sued forth," so as to make the consent a condition precedent to filing a suit, is, in our opinion, not correct. In similar enactments where such a condition is made precedent, the Legislature has clearly expressed their intention. Act XVII of 1873 (Nawab Nazim's Debts) bars by s. 11 "suits" and "process" against the person or property of person for whose benefit it has been made, unless with the consent of the Governor-General in Council. Similarly does Act XX of 1873, s. 2 (The Prince of Arcot's Act) (1). Had the intention of the Legislature been that such consent should be previous to filing a plaint under the Act, instead of the expression "sued forth," "sued for" **[499]** would have been used. The same interpretation on the section has been put by the Division Bench of this Court (2). In the present case the consent, though it was obtained subsequently to the filing of the plaint, did not, in our view of the section, vitiate the proceedings. We must, therefore, confirm the decree with costs.

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12 B. 499.

APPELLATE CIVIL.

Before Mr. Justice Nanabhai Haridas and Mr. Justice Jardine.

VISHNU VISHWANATH (*Plaintiff*) *v.* HUR PATEL AND OTHERS (*Defendants*).* [9th February, 1888.]

Civil Procedure Code (Act XIV of 1882), *s.* 257 *A—Decree*—Havala *or undertaking by a third party to pay decreed debt for the judgment debtor—Agreement incorporating the* havala, *in substitution of the decree, capable of execution at the date of the agreement—Suit on such agreement.*

The plaintiff obtained a money decree against the defendant Hur Patel, and in execution thereof attached his property. Thereupon, at Hur Patel's request, five persons gave a *havala* or oral undertaking to pay the amount of the decree, and the attachment was removed. It appeared that some payment was made under the *havala*. Subsequently Hur Patel and the defendants Nos. 2 and 3 executed a bond to the plaintiff reciting the *havala*, the payment thereunder, and agreeing to pay the amount of the decree with interest. Neither the *havala* nor the bond was brought to the notice of the Court for sanction, and the decree, which was capable of execution, was then destroyed. The plaintiff now sued to recover the debt due under the bond. The District Judge was of opinion that the part of the bond which contained a promise to pay interest was void, but that in respect of the principal amount of the decree it was not void. On reference to the High Court,

Held, that the whole bond was void. The *havala* was an agreement such as is contemplated in paragraph 1 of s. 257A of the Civil Procedure Code (Act XIV of 1882), and was void for want of sanction of the Court under that section. The bond, regarded as one in consideration of the *havala* or as an agreement for satisfaction of the decree, was also void under paragraph 2 of the same section for a similar reason.

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* Civil Reference No. 45 of 1887.

(1) See Broughton's Civil Procedure Code, p. 60 (ed. 1877).

(2) Appeal No. 68 of 1884 decided on 4th May 1887.

[Over., 23 B. 502 ; Diss., 3 O.C. 166 (168) ; N.F., 16 C. 504 ; F., 18 A. 479 ; R., 21 B. 808 (819) ; 88 P.R. 1904 ; D., 25 B. 252 (262).]

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THIS was a reference by H. Batty, District Judge of Thana, under s. 617 of the Civil Procedure Code (Act XIV) of 1882.

[500] The plaintiff obtained a money decree against the defendant Hur Patel, and, in execution thereof, attached his property. Thereupon, at Hur Patel's request, five persons gave a *havala* or oral undertaking to pay the amonnt of the decree, and the attachment was removed. It appeared that some payment was made under the *havala*. Subsequently Hur Patel and the defendants Nos. 2 and 3 executed a bond to the plaintiff reciting the *havala*, and the payment thereunder, and agreeing to pay the amount of the decree with interest. Neither the *havala* nor the bond was brought to the notice of the Court for sanction, and the decree, which was capable of execution, was then destroyed. The plaintiff now sued to recover the debt due under the bond. The District Judge was of opinion that the part of the bond which contained a promise to pay interest was void, but that in respect of the principal amount of the decree it was not void.

The points submitted by the District Judge for the High Court's decision were :—

1. Is an agreement void under s. 257A if entered into by a judgment-debtor and others with a decree-holder to pay the amount of an *havala* given in settlement of a decree with interest not awarded by the decree, if at the time of such agreement in substitution of the *havala* the decree was still enforceable and was not certified as satisfied ?

2. If the agreement to pay interest in excess of the decree be void, is the agreement valid and enforceable as far as regards the amount due under the decree ?

On the first point the District Judge was of opinion that the agreement was void under s. 257A so far as regards the interest not due under the decree ; on the second, that the agreement is not void in respect of the principal due under the decree.

Vasudev Gopal Bhandarkar, for the plaintiff.—The first defendant was not a party to the *havala*, though it was given at his request by others. The defendant was a party to the bond, and if the bond is void as against him it is not so as against the other defendants. The bond is not entirely void. The agreement for payment of interest can be separated from the other part, and [501] the other defendants are liable to pay the principal amount of the decree : see *Davlatsing* v. *Pandu* (1). The provisions of s.257A (Act XIV of 1882) applying only to parties to the decree, and here the other defendants not being parties are liable to pay : see *Yella Chetti* v. *Munisami* (2).

Shivram Vithal Bhandarkar, for the defendants.—The whole bond is void, as the two parts cannot be separated. *Davlatsing* v. *Pandu* (1) is on all fours with the present case. If the *havala* is void, for want of Court's sanction under s. 257A of the Civil Procedure Code, the bond, which was based on it, is also void.

JUDGMENT.

NANABHAI HARIDAS, J.—The *havala* mentioned by the District Judge was an agreement such as is contemplated in para. 1, s. 257A,

(1) 9 B. 176. (2) 6 M. 101.

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Civil Procedure Code, and, as such, void on account of want of sanction by the Court which had passed the decree.

If the bond sued upon be regarded as one in consideration of the *havala*, there was no consideration for it; the *havala* itself was void for the reason above mentioned.

If it be regarded as an agreement for the satisfaction of the decree, it comes under para. 2, s. 257A of the Code, and is void for want of the Court's sanction.

For these reasons, we consider the whole bond to be void.

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12 B. 501.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.

JUGALDAS (*Original Defendant*), *Appellant v.* AMBASHANKAR AND ANOTHER (*Original Plaintiffs*), *Respondents.**
[1st March, 1888.]

Landlord and tenant—Sale by landlord of land held by tenant—Fraud in such sale—Suit by purchaser against tenant—Plea by tenant impeaching sale by his landlord—Limitation.

The defendant was tenant of the lands in dispute under a lease dated 22nd June, 1875. In 1878 his landlord sold the lands to the plaintiffs by registered deed, but in 1879 complained to the Mamlatdar that he had been cheated by the plaintiffs, who, he alleged, had not paid the purchase-money. This allegation the plaintiffs denied.

[502] In September, 1881, the defendant brought a suit against the plaintiffs, in which he prayed for a declaration that the sale of the land to the plaintiffs was fraudulent, and that no consideration had been paid. This suit, however, was withdrawn by the defendant on the 15th November, 1881, with leave to bring a fresh suit, but no fresh suit was brought by him within three years from November, 1881, nor was any suit brought by the plaintiffs' vendors to set aside their sale to the plaintiffs.

In 1883, the plaintiffs brought this suit against the defendant, to recover Rs. 960 as arrears of rent for four years for the lands described in their plaint. They alleged that the lands in question had been sold to them on the 12th September, 1878, and that the lands mentioned in their plaint had been leased on the 22nd June, 1875, to the defendant by their (the plaintiffs') vendors, and that in that lease the defendant had contracted to pay Rs. 240 annually. The defendant in his defence again raised the question whether the sale to the plaintiffs was not fraudulent and without consideration.

Held, that the right of the defendant to plead as a defence to this suit, that the plaintiffs' purchase of the 12th September was fraudulent and void, was barred. As a tenant he had no independent right to impeach the sale by his own landlords. He could only do so with their consent, assuming it to be still open to them to impeach it. But their complaint to the Mamlatdar in 1879 showed that they were then acquainted with the facts which entitled them to set aside the sale, and by the end of 1882, at the latest, their right to file a suit for that purpose was, therefore, barred. Their right to impeach the sale by suit being thus barred their tenant (the defendant) could not be allowed to impeach it as a defence to an action by the plaintiffs.

[R., 16 B. 1 (8); 17 M. 255 (256); 29 M. 1 (12); 30 M. 169 (178)=2 M.L.T. 4=17 M. L.J. 19; 7 Bom. L.R. 772; 4 C.L.J. 334 (337); **D.**, 14 B. 222 (225); 28 B. 639 (642).]

* Second Appeal No. 748 of 1885.