

JUDGMENT.

SARGENT, C. J.—We think with the Madras High Court—*Yella Chetti v. Munisami Reddi* (1)—that s. 257-A applies only as between the parties to the suit and decree. Whether on other grounds there was no good consideration for the bond is another question.

1889
MARCH 28.

APPEL-
LATE
CIVIL.

13 B. 671.

13 B. 672.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

BAI SHRI MAJIRAJBAI (*Plaintiff*) v. NAROTAM HARGOVAN
(*Defendant*).^{*} [28th March, 1889.]

Court-fee—Written statement—Set-off—Civil Procedure Code (Act XIV of 1882), ss. 111 and 216—Construction.

A written statement containing a claim of set-off is chargeable with the Court fee which would be payable on a plaint of that nature.

Amir Zama v. Nathumal (2) followed.

[*Diss.*, 8 C.W.N. 174 (177); *Appr.*, 15 M. 29 (34); R., 28 B. 244 (246); 32 C. 654 (661)=1 C.L.J. 364; 85 P.R. 1908=80 P. W.R. 1908=130 P.L.R. 1908; 23 T. L.R. 123 (129).]

THIS was a reference from Rav Saheb Vadilal T. Parikh, Subordinate Judge of Dholka, under s. 617 of the Code of Civil Procedure (Act XIV of 1882).

The facts of the case are as follows:—

The plaintiff claimed to recover the balance due on account of wheat sold and delivered to the defendant.

The defendant in his written statement, tendered at the first hearing and bearing a Court-fee stamp of eight annas, admitted having received the wheat, but alleged that the price had been paid in full. He further claimed a set-off of a certain sum as damages [673] sustained by him by reason of the non-delivery of certain quantity of wheat.

The question referred for the High Courts's decision was—

Whether any, and if so what, Court-fee is payable on the set-off pleaded by the defendant?

The Subordinate Judge was of opinion that no Court-fee was required.

There was no appearance for the parties.

OPINION.

SARGENT, C.J.—We agree with the opinion of the Allahabad High Court in *Amir Zama v. Nathumal* (2), having regard to the language of the concluding paragraph of s. 111 and of s. 216, that a written statement containing a claim of set-off must be regarded as a plaint in regard to such set-off, and is, therefore, chargeable with the Court-fee which would be payable on a plaint of that nature.

^{*} Civil Reference, No. 1 of 1889.