(1868) 07 CAL CK 0011

Calcutta High Court

Case No: Special Appeal No. 2691 of 1867

Maniklal Baboo		APPELLANT
	Vs	
Ramdas Mazumdar		RESPONDENT

Date of Decision: July 9, 1868

Judgement

Bayley, J.

1, This Special Appeal must be decreed with costs. The plaintiff sued the defendant upon a bond, and alleged that the consideration had passed. The bond recited the fact of the consideration having passed when the bond was executed. The defendant admitted the execution of the bond, but at the same time pleaded that the consideration, as recited in the bond, had not been paid; that, on the contrary, as the plaintiff did not agree to gives the money until the bond was registered, he (the defendant) raised money by pledge of jewels.

2. The first Court gave the plaintiff a decree. The Lower Appellate Court has dismissed the plaintiff"s suit, on the ground that the plaintiff failed to prove that the consideration had passed.

3. The plaintiff appeals specially, and urges that as the defendant admitted the (sic)ution of the bond in which the payment of the consideration was recited, (sic) burden of proving that consideration had not been paid was on the defendant. On the other hand, the special respondent urges, that an admission made in a written statement must be taken as a whole, that is to say., it cannot be accepted (sic) an admission of his execution of the bond; if the plea is rejected, that there was no consideration at all, and it is urged that in this view the burden of proof still lies on the plaintiff.

4. We are of opinion that when the defendant in his bond stated that the money had been received by him, and when he in his written statement admitted that the bond was executed by him, it was upon him to prove that the facts stated by him in the bond, were really different from what they were recited to be. This is an ordinary rule of law, and

according to it, we think, the decision of the Lower Appellate Court, which threw the entire burden of proof on the plaintiff, when it ought to have been on defendant, ought to be reversed. We, accordingly, reverse it, decree the special appeal with costs, and affirm the judgment of the first Court.