

COMERAPPA CHETTY v. JAYASOORIYA.

1896.

September 30.

D. C., Galle, 3,165.

*Action on promissory note—Plea of payment—Corroborative evidence—
Burden of proof.*

When a defendant who is sued on a promissory note alleges on oath certain payments and gives dates and particulars of each payment, the plaintiff is bound to lead rebutting evidence.

THE facts of the case sufficiently appear in the judgment of
BONSER, C.J.

Dornhorst with Blazé, for appellant.

Layard, A.-G., for respondent.

30th September, 1896. BONSER, C.J.—

In this case the plaintiff sues the defendant to recover a sum of money alleged to be due on a promissory note.

1896. The defence was that the claim was satisfied by a number of
September 30. payments, extending over a long period of time—extending from
 HONSEE, C.J. the 15th October, 1892. The defendant called evidence to cor-
 roborate his statements as to certain of his payments, and in one
 or two instances his witnesses gave a rather different account of
 the transaction from that given by himself. But with regard to
 one alleged payment, at all events, there is no doubt that the
 cheque for Rs. 25·42 undoubtedly found its way into the hands of
 the plaintiff and was cashed by him. The defendant swears that
 that cheque was given on account of this note. There is no
 evidence on the other side. The District Judge said that he did
 not want to hear any evidence. The evidence of the defendant
 is corroborated by the production of the cheque itself, but the
 District Judge says that the cheque may have been given for some
 other transaction.

It seems to me that, in a case like this, when the defendant, on
 his oath, alleges certain payments, the onus is on the other side
 to rebut that evidence. Of course if a defendant merely says I
 paid the money and gives no dates or particulars, the judge might
 disregard the statement as being altogether too vague ; but when
 the defendant goes into the box and gives particulars of each
 payment, and supports the payments by the production of a
 cheque, there is a case made out which calls for evidence on the
 part of the plaintiff in answer. Therefore I think that this case
 should go back for a new trial. The costs of the previous trial
 and of this appeal will depend on the result of the new trial.

WITHERS, J.—

I agree in the order pronounced. I am very loath, as a general
 rule, to send a case back for a new trial ; but there are instances
 when this must be done to secure the ends of justice.

