

CIVIL REFERENCE.

Before Sharfuddin and Coxe J.J.

RAM SARUP BHAGAT

v.

BANSI MANDAR.*

Bond—Slavery bond—Public policy—Overwhelming interest.

Where in a bond the executant bound himself down to daily attendance and manual labour until a certain sum was repaid in a certain month, and it penalised default with overwhelming interest :—

Held, that such a bond was not enforceable at law being opposed to public policy.

THIS was a reference by the Munsif of Banka, whether a certain bond was enforceable at law. It arose out of a suit to recover money on a *harwahi* (ploughman's) bond. The defendant, on the 26th of Falgun 1315, borrowed Rs. 13 from the plaintiff and gave him a bond in the following terms :—

"I am Bansi Mander, son of Aghauri Mander deceased, by caste a Koeri, inhabitant of Golampur, Perganah Bhagalpur.

I have borrowed Rs. 13 in cash from Ram Sarup Bhagat inhabitant of Bandara, to meet my household expenditure. In satisfaction of interest, I shall daily remain in attendance, and plough the land of the said Bhagat, work with spade in his land, transplant his seedlings, thresh his crops by means of *danni*, etc., and shall perform and manage all works required from me. I shall take wages and *butad* (food) according to the usage of the said village. In the year . . . I wish to repay the money, I shall repay it in the month of Baisakh of that year in one lump sum, and then I will leave his work. I shall not repay money in any other month except the month of Baisakh. If I absent myself from work without repaying the money, then I shall pay interest at the rate of Rs. 6-4 per. cent. per mensem from the date of absence to the day of realization. I have, therefore, executed this

* Civil Reference, No. 3 of 1915, by Kamala Prasad, Munsif of Banka, dated Jan 22, 1915.

harvahi (ploughman's) bond on the above conditions so that it may be of use, when required."

The plaintiff's case was that the defendant had left his service without paying the debt. Hence the suit for the recovery of Rs. 13 as principal, and Rs. 22 interest, in all Rs. 35. The defendant did not appear to contest the suit.

The learned Munsif in his letter of reference observed as follows:—

"Bonds of this nature are very common in this Subdivision and I am told that there is no agriculturist who has not taken such a bond from his labourers. It is very difficult for agricultural operations in this Subdivision to go on smoothly without such bonds. But it is said that such bonds are really slavery bonds, and reference to such bonds was made in a recent administration report of the Government of Bihar and Orissa. If these bonds are really slavery bonds, they should be declared null and void by the Courts. But in my opinion these are not slavery bonds. The contract though for indefinite period is determinable by the labourer on payment of money secured by the bond. The labourer is, moreover, to get his customary wages from the employer so long as he serves him. No doubt the provision to pay exorbitant rate of interest is such as to deter the labourer from leaving the service. The abject and poor condition of majority of these labourers are such that they are never able to pay the money secured, unless there is another employer who pays him a higher value out of which he may redeem himself. Under such a circumstance, the stipulation to pay an exorbitant rate of interest often serves as a check on him and prevents him from leaving the service. The result is that the same family of labourers goes on serving the same family of employer from generation to generation. But this is a circumstance which is not the result of the contract itself, but of extraneous circumstances. The provision to pay interest is really a penal provision which may be relieved against by Court.

As I entertain reasonable doubt on the point of law involved in this case, I refer under Order XLVI, r. 1, of the Civil Procedure Code for the decision of the Hon'ble High Court the following question:—

Whether the bond in suit is a slavery bond? Are its terms enforceable?"

SHARFUDDIN AND COXE JJ. This is a reference by the Munsif of Banka, under Order XLVI, rule I of the

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Civil Procedure Code, for a decision whether a certain bond is enforceable at law. It appears to us that it is not so enforceable. It binds down the executant to daily attendance and manual labour until a certain sum is repaid in a certain month and penalises default with overwhelming interest. It is remarkable that the suit, which is brought on this bond, is not contested, and this, in the Munsif's opinion, is probably due to the fact that the executor is too poor to defend himself. Such a condition is indistinguishable from slavery, and such a contract is, in our opinion, opposed to public policy and not enforceable.

S. K. B.