

kind, in all Courts as regards the natives of India. The Indian Contract Act, Section 23, makes void contracts contrary to public policy, but there is here no such contract.

The second defendant agreed to pay to the plaintiff the amount of the debt, but in the evidence it appears that such agreement was not made to induce plaintiff to forego the prosecution of the first defendant, nor was there any conversation between either of the plaintiffs or any other person with the defendant in respect to any such prosecution. When the second plaintiff saw the second defendant, the father of first defendant, the second defendant said: "My son got this money; he was very foolish; he gave it to me; we have it and will give it to you." The consideration by the second defendant for his promise was that he had got possession of all or part of the money. There was no compounding of a criminal offence within Section 213, 214, or 215 of the Indian Penal Code, nor was the second defendant's promise affected by any consideration except that of paying his son's obligation, and that the second defendant had received part of the plaintiff's money.

Decree against both defendants for Rs. 2,000 and interest and costs.

NOTES.

[See also (1901) 14 C. P. L. R., 123.]

[4 Mad. 417.]

APPELLATE CIVIL.

The 5th December, 1881, and 23rd January, 1882.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KINDERSLEY.

Mahadevappa.....(Plaintiff's Representative), Appellant
and

Srinivasa Rau and another.....(Second and Third Defendants),
Respondents.*

Civil Procedure Code, Section 267—Alienation after attachment—Renewal of prior mortgage.

A renewal of mortgage already existing on the property prior to attachment, which does not enhance the charge, is not an alienation within the meaning of Section 276 of the Code of Civil Procedure.

THIS was a suit to recover Rs. 50, principal and interest, due on a registered mortgage bond, dated 29th May 1879, executed by first defendant.

The house mortgaged was purchased by third defendant at auction in execution of a decree obtained by the second defendant against the first defendant.

The plaintiff prayed for a decree against the person of the first defendant and against the house mortgaged.

The Munsif gave the plaintiff a decree against the person of the first defendant, but not against the house, on the ground that the mortgage bond was

* Second Appeal No. 126 of 1881 against the decree of V. Gopala Rau Pantulu, Subordinate Judge of Bellary, confirming the decree of P. Tirumal Rau, District Munsif of Bellary, dated 23th October 1880.

executed after the house was attached and during the continuance of attachment and was, therefore, null and void under Section 276 of the Code of Civil Procedure—*Anund Loll Doss v. Jullodhar Shaw* (14 M. I. A., 543).

[418] The plaintiff offered to produce a mortgage deed of 1874, which was superseded by the mortgage deed now sued upon, if the Munsif was of opinion that the renewed bond was void.

The Munsif rejected this application.

The plaintiff appealed on the ground that the Court ought to have admitted the mortgage deed of 1874 in evidence, and that a renewal was not an alienation under Section 276 of the Code of Civil Procedure.

The Subordinate Judge confirmed the Munsif's decree.

The plaintiff appealed to the High Court.

Ramachandra Rau Sahib for Appellant.

The Respondents were not represented.

The Court (INNES and KINDERSLEY, JJ.) delivered the following

Judgment:—We think the provisions of Section 276 are not intended to avoid dispositions of the property attached by the judgment-debtor which are merely in the nature of a renewal of an encumbrance already existing on the property prior to the attachment, and which do not enhance the burden to which it was previously liable. No doubt the plaintiff, in accordance with the provisions of the second clause of Section 57 of the Civil Procedure Code, should have entered the prior mortgage in a list annexed to the plaint. But, notwithstanding the omission on his part to comply with the prescribed procedure, it was open to the Court, under Section 63, to receive the prior mortgage deed in evidence and, we think, the Court should have received it under the circumstances. It is a registered document and, if established, it may tend to show that the obligation of the bond on which plaintiff relied created no new burden, but merely recognized the continuance of a portion of a burden previously charged on the property.

In so far, however, as the new bond charges the land to an amount exceeding that to which it would have been liable in discharge of first defendant's share in the original debt with interest, it would, of course, have to be held void under Section 276, Civil Procedure Code.

We shall reverse the decrees of the Courts below and remand the suit for retrial.

The costs of this second appeal will abide and follow the result.

NOTES.

[See also (1896) 19 Mad., 160, as to when the prior mortgage may be resorted to.]