

adjudication to have been on a defective petition, it ought to have been set aside, when, on further evidence, it appears that the trader has made himself liable to be adjudicated an insolvent.

But I think that such further evidence can be taken into consideration on an application to set aside the adjudication.

In the present case the further facts appear upon the petition of the insolvent, the affidavit filed in support of it, and the affidavit in reply.

Mr. Jackson argues that the affidavit in reply cannot be used, because it was not sworn until after the Court sat to dispose of the case last week, when the case should have come on to be heard. But it was filed on that occasion, and it has now been filed for a week. This is all that is required by the rules of practice: rules 476 and 498, Belchambers's, p. 212. The insolvent had an opportunity of seeing the affidavit in answer if he desired to do so.

I think, therefore, that this petition must be dismissed, and that the adjudicating-creditor may add his cost of opposing it to his debt, and that the costs of the Official Assignee ought to be paid out of the estate.

Petition dismissed.

Attorney for the Petitioner: Baboo Womesh Chunder Benerjee.

Attorney for the adjudicating-creditor and the Official Assignee: Baboo Kali Nath Mitter.

APPELLATE CIVIL.

Before Mr. Justice Romesh Chunder Mitter and Mr. Justice Tottenham.

KRISHTO LALL GHOSE (DEFENDANT) v. BONOMALEE ROY AND ANOTHER (PLAINTIFFS).*

1879
July 24.

Evidence—Admissibility of Document requiring Registration—Divisible Transaction.

When a transaction is indivisible, and the registration of the document evidencing it is, by law, compulsory, the document will not be admissible in

* Appeal from Appellate Decree, No. 157 of 1879, against the decree of Baboo Nobin Chunder Gangooly, Subordinate Judge of Zilla Beerbhoom, dated the 21st of December 1878, affirming the decree of Baboo Purno Chunder Shome, Sudder Munsif of that District, dated the 15th of August 1878.

1879
 KRISHTO LALL
 GHOSE
 v.
 BOMMALAEE
 ROY.

evidence if not duly registered; but when the transaction is divisible, as when upon a loan of money, it is agreed—(i) that the loan shall be secured by a bond containing a covenant for repayment of the sum advanced with interest within a certain time; and also (ii) that certain designated property shall be hypothecated as collateral security for the repayment of the loan,—the same rule does not apply, and an unregistered bond for the amount advanced, with interest, containing a further provision that as collateral security for the amount advanced certain property should remain hypothecated, may be used as evidence of the loan although inadmissible to prove the hypothecation.

Sreemutty Matonginy Dossee v. Ramnarain Salkhan (1) distinguished.
Luchmiput Singh Dugur v. Mirza Khairat Ali (2) followed.

IN this case the plaintiffs sued to recover the balance of principal and interest due to them in respect of two bonds, one for Rs. 56-12 and the other for Rs. 599, executed in their favor by the defendant. The bond for Rs. 599 contained, besides a covenant for repayment of the money advanced with interest, a further provision that certain specified lands should remain hypothecated as collateral security for the repayment of the debt. The defendant repudiated the whole transaction, and denied having executed either of the bonds. Both the lower Courts found that the bonds had been duly executed by the defendant, and gave the plaintiffs a decree for the full amount claimed.

Against this decision the defendant appealed to the High Court.

Baboo *Tarahnath Sen* for the appellant.

Baboo *Sreenath Dass* for the respondents.

Baboo *Tarahnath Sen*.—The decision of the lower Court is erroneous, as even if it be admitted the bond for Rs. 599 was executed by the defendant, it was not admissible in evidence, because it was not registered, although a document, the registration of which is made compulsory by s. 17, cl. b of the Indian Registration Act III of 1877.

(1) 2 C. L. R., 428.

(2) 4 B. L. R. (F. B.), 18.

The judgment of the Court (MITTER and TOTTENHAM, JJ.) was delivered by

1879
KRISHNO LALL
GHOSH
v.
BONOMALLES
ROY.

MITTER, J.—We do not see any reason for interference in this case.

The only point that we need notice is, that one of the bonds filed by the plaintiffs, *viz.*, the bond for Rs. 599, not having been registered, was not admissible in evidence. This bond is dated the 8th Joist 1283 (20th May 1876). In support of this contention, the case of *Sreemutty Matonginy Dossee v. Ramnarain Sadkhan* (1) has been cited. It appears to us that that case is quite distinguishable. On the other hand, the present case seems to us to be governed by the Full Bench decision in the case of *Luchmiput Singh Dugar v. Mirza Khairat Ali* (2) referred to in the decision cited before us, and which was distinguished by the learned Judges who passed it from the case which was then before them. The distinction between this case and the Full Bench decision referred to above, and the case cited before us, is, as shown by the learned Judges, that where the transaction is indivisible, and the registration of the document evidencing that transaction is compulsory, there the document is not admissible in evidence if it is not registered; but where the transaction is divisible, the same strict rule does not apply. For example, in this case the document upon which the plaintiffs rely is in the nature of a bond by which the defendant agreed to pay a certain sum of money with interest to the plaintiffs. It further provides that as collateral security for the loan advanced a certain property should remain hypothecated. This document for want of registration would not be operative as regards the hypothecation, but it is admissible in evidence to prove that the defendant was liable for the loan advanced under it.

For these reasons, we are of opinion that there is no force in this contention. The appeal must, therefore, be dismissed with costs.

Appeal dismissed.

(1) 2 C. L. R., 428.

(2) 4 B. L. R. (F. B.), 18.