

1882 the tenants for rent; and that, not only as regards revenue-pay-
 RAMKRISHN DASS ing, but all other estates.

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Unfortunately, however, that is not the law at present; and we must therefore dismiss this appeal with costs.

It is admitted that the appeals, numbered 1550 to 1553 inclusive, will be governed by this decision. Those appeals, therefore, are also dismissed with costs.

Appeal dismissed.

FULL BENCH REFERENCE.

Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice McDonell, Mr. Justice Prinsep and Mr. Justice Wilson.

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 March 9.

ULFATUNNISSA *alias* ELAHIJAN BIBI (DEFENDANT) v. HOSAIN KHAN (PLAINTIFF).*

Registration Act III of 1877, s. 49—Unregistered bond—Evidence—Mortgage.

An unregistered bond, containing a personal undertaking to repay money borrowed, and also a hypothecation of land above Rs. 100 in value as security, may be used in evidence to enforce the personal obligation.

THIS was a suit for money lent and interest. The plaintiff alleged that the defendant had borrowed from the plaintiff the sum of Rs. 2,500 on the 3rd of February 1878, and that on the same date she executed a bond, whereby she promised to pay the money within a year. The bond had been lost by the plaintiff before the institution of the suit, but on the trial secondary evidence of its contents was given by one of the plaintiff's witnesses, who is thus referred to by the lower Appellate Court: "He drew up a draft of the plaint to be filed with the bond before it was lost, and was plaintiff's adviser at the time. He is therefore in the best position of all the witnesses to speak as to its contents. He says the bond contained these words: "I promise to pay the amount of the bond peaceably *ब्याज*—if not, you will sell the property which is mortgaged; and you may then proceed

* Full Bench Reference made by Mr. Justice Wilson and Mr. Justice Field, dated the 6th September 1882, in appeal from Appellate Decree No. 699 of 1881.

against my other property." The defendant contended that the bond should have been registered, and, that not having been done, submitted that the plaintiff's suit should be dismissed. The Court of first instance gave the plaintiff a decree which was affirmed on appeal, the Judge citing *Mattongeney Dossee v. Ramnarain Sadkhan* (1), and *Krishlo Lal Ghose v. Bonomalee Roy* (2). The defendant appealed to the High Court on the ground (*inter alia*) that the lower Appellate Court was wrong in holding that the bond was legally admissible as evidence in the case. The case came on for hearing before a Division Bench of the High Court (WILSON and FIELD, JJ.) who referred the point for the decision of a Full Bench, with the following remarks :

WILSON, J.—The main question raised in this appeal is one upon the construction of s. 49 of the Registration Act (III of 1877).

The instrument sued on was not produced; but the loss having been proved, secondary evidence was given of its contents. The exact terms of the document do not appear; but the witnesses all agree that the document, which they call a bond, contained an acknowledgment of a loan of Rs. 2,500, a promise to repay the amount, and a mortgage of immovable property to secure it.

The suit is a personal suit to recover the money. And the question is, whether the document can be given in evidence in support of such a personal claim, it not having been registered.

Section 49 says: "No document required by s. 17 to be registered shall affect any immovable property, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power."

The whole question appears to turn upon the meaning of the word *transaction*. Where under one contract and for one consideration two obligations are undertaken, one affecting land and the other not, is the whole one transaction within the meaning of the section? Or may it be said that there are two distinct transactions, provided the obligation which does not affect land

(1) I. L. R., 4 Calc., 83.

(2) I. L. R., 5 Calc., 611.

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be both intelligible and capable of performance without reference to the other which does?

Apart from authority, I see great difficulty in saying that the transaction means anything but the whole bargain. It is a familiar rule of construction that words not of a technical nature are to be understood in their ordinary and natural sense unless a reason to the contrary appear; and I rather think that anyone, not a lawyer, who had borrowed money on mortgage, and executed a mortgage bond, would be surprised if he were told that he had been engaged in two separate transactions. And the difficulty is increased by the words that precede,—which say that “no document required by s. 17 to be registered shall affect any immovable property.” If the later words be read in such a sense as to make the word ‘transaction’ mean such part of the bargain as relates to land, it is not clear to my mind how they are to have any operation at all, or how they can apply to any case not already covered by the previous words.

The authorities bearing upon the question appear to stand thus: In Act XX of 1866, s. 49, the words of the enactment were: “No instrument required by s. 17 to be registered shall be received in evidence in any Civil Proceeding in any Court, or shall affect any property comprised therein” unless registered. Upon these words a Full Bench of this Court held that all that was forbidden was the reception of the document “in evidence as a document affecting an interest in land”—*Lachmiput Singh Dugar v. Mirza Khairat Ali* (1). The same view was taken by the Madras High Court in *Vallaya Padayachy v. Moorthy Padayachy*, (2). The Bombay High Court followed these rulings, though in the first instance without wholly approving them, in *Tukaram Vithoji v. Khandoji Malharji* (3); and *Sangappa Bin Ningappa v. Basappa Bin Parappa*, (4). The section under which these cases were decided deals only with the effect and admissibility of the instrument, and says nothing about the transaction.

The language of s. 49 in the Act of 1871 was the same as that of the present Act. Under these Acts four cases, so

(1) 4 B. L. R., (F. B.), 18.

(3) 6 Bom. H. C. O. C., 134.

(2) 4 Mad. H. C., 174.

(4) 7 Bom. H. C. A. C., 1.

far as I am aware, have been decided. The case of *Raju Balu v. Krishnarav Ramchandra* (1) came before Green, J. That was a suit for damages for breach of a covenant contained in a document which also conveyed land. The learned Judge held that, even assuming the covenant not itself to affect land, yet, inasmuch as it could not be construed without referring to the conveyance, effect could not be given to it. The question whether a term not affecting land, if intelligible and capable of performance separately, could be enforced, did not arise. The case of *Mattongeney Dossee v. Ramnarain Sakhian* (2) came before Garth, C.J., and Markby, J. The bond was somewhat singularly worded, and some doubt was expressed whether it contained a personal promise to pay. But assuming that it did, the Court said: "In this case the document is not divisible. It discloses one transaction only, and that the transaction which the plaintiff must necessarily prove for the purpose of making out his case." And again it is said: "The transaction was one and indivisible." In that case I understand the Court as meaning by "the transaction" the whole bargain.

The case of *Krishto Lal Ghose v. Bonomalee Roy* (3) came before Mitter and Tottenham, JJ. In that case again there was a bond containing a covenant to repay a sum of money borrowed and a mortgage to secure it. It was held that the two things were separable, and that the money might be recovered. That decision seems to me to involve the view, that *transaction* means not the bargain, but that term of the bargain which affects land.

It is true that the learned Judges who decided that case distinguish it from that before Garth, C.J., and Markby, J.; but I feel great difficulty in seeing the distinction with sufficient clearness to enable me to say with confidence under which authority the present case falls.

In the case of *Sheo Dial v. Prag Dat Misser* (4), a similar question came before a Full Bench of the Allahabad High Court. The defendant had executed a bond by which he

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(1) I. L. R., 2 Bom., 273.

(3) I. L. R., 5 Calc., 611.

(2) I. L. R., 2 Calc., 33.

(4) I. L. R., 3 All., 229.

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bound himself to pay a sum of money borrowed, and hypothecated land as security. The Court held that the plaintiff could sue for the money, though the bond was not registered. OLDFIELD, J., in that case says expressly, and the other learned Judges seem to me to say by necessary implication, that the promise to pay and the hypothecation were distinct transactions.

In this state of the authorities, the question being one of very general importance, I think the matter should be referred to a Full Bench.

The question which I propose to refer is, whether the absence of registration is a bar to this suit.

FIELD, J.—I concur in making this reference to a Full Bench.

Baboo *Srinath Dass* and Baboo *Grija Sunker Mozumdar* for the appellant.

Baboo *Mohiny Mohun Roy* and Baboo *Makund Nath Roy* for the respondent.

The judgment of the Full Bench was as follows:—

The question we have to decide is, whether an unregistered bond, containing a personal undertaking to repay money borrowed and also a hypothecation of land above Rs. 100 in value as security, may be used in evidence to enforce the personal obligation.

The section on which the case turns is s. 49 of the Registration Act, III of 1877, which says: "No document required by s. 17 to be registered shall affect any immovable property comprised therein.....or be received as evidence of any transaction affecting such property....., unless it has been registered."

In the previous Registration Act, XX of 1866, the corresponding section was s. 49, which provided that: "No instrument required by s. 17 to be registered shall be received in evidence in any civil proceeding in any Court, or shall affect any property comprised therein," if unregistered.

Under that Act it was held by a Full Bench of this Court in *Lachmiput Singh Dugar v. Mirza Khairat Ali* (1), that a

(1) 4 B. L. R. (F. B.), 18.

bond, such as that in question, was admissible to prove the debt. And the same view was taken by the High Courts of Madras, Bombay and N. W. Provinces—*Vallaya Padyachy v. Moorthy Padyachy* (1); *Tukaram Vithoji v. Khandoji Malharji* (2); *Sangappa Bin Ningappa v. Basappa Bin Parappa* (3); *Seeta Kulwar v. Jugurnath Pershad* (4). Under the Act, therefore, it was settled law for the whole of India that an unregistered document like the present was effectual and might be used in evidence to charge the person, though not the land. On a matter of such general importance, we think we ought not to hold the law to be changed, unless we see very clearly that the Legislature intended to change it. But when the language of the two Acts is compared it is seen that the words of the later are not more stringent, but less stringent, than those of the earlier.

We think also that in dealing with one of several Acts forming a consecutive series relating to the same subject, like the Registration Acts, we ought, as far as possible, to apply to the sections of the later Act the same method of construction which has been applied to the corresponding sections of the earlier. In the Full Bench case already referred to, the words “shall be received in evidence or shall affect” land were held to mean “should be received in evidence as a document affecting” land. We are applying exactly the same method of interpretation in holding that the words “shall be received as evidence of any transaction affecting land,” mean,—shall be received as evidence of any transaction so far as it affects land. And this we think is the true construction.

The view which we thus take of the section renders it unnecessary to consider the question discussed in some of the cases, and in the referring order, whether a document of this kind embodies only a single transaction or may properly be said to contain two.

We answer the question referred to us in the negative, and dismiss the appeal with costs.

- (1) 4 Mad. H. C., 174.
- (2) 6 Bom. H. C. O. C., 134.
- (3) 7 Bom. H. C. A. C., 1.
- (4) 4 Agra H. C., 170.

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