restraining defendant No. 3 from demolishing the house so long as its condition remains as at present. We further grant a decree to the plaintiff for the sum of Rs.50 in name of damages as against defendants Nos. 1 and 2. The plaintiff is entitled to his costs against defendants 1 and 2 throughout.

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RAM CHANDER v. MAHARAJ KUNWAR

REVISIONAL CIVIL

Before Mr. Justice Rachhpal Singh

BHIM SEN (PLAINTIFF) *v.* RAGHUBIR SARAN (DEFENDANT)*

1939 *April*, 26

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 2(10)(a)—"Loan"—Promissory note merely in renewal of earlier promissory note, without any fresh advance—Whether a "loan".

A promissory note, merely in renewal of an earlier promissory note and without any fresh advance, is a transaction which is "in substance" a loan and is therefore a "loan" as defined in section 2(10)(*a*) of the U. P. Agriculturists' Relief Act.

Dharam Singh v. *Bishan Sarup* (1), not followed.

Mr. *B. Mukerji*, for the applicant.

Mr. *Jagnandan Lal*, for the opposite party.

RACHHPAL SINGH, J.:—The sole question for determination in this case is whether or not the transaction in question can be said to be a loan as defined by the Agriculturists' Relief Act. If the answer to this question is in the affirmative, then this revision application must fail.

The defendant executed a promissory note in favour of the plaintiff some time before the Agriculturists' Relief Act came into force. After that Act had come into force, the defendant, on the 16th of May, 1935, executed a fresh promissory note in satisfaction of the debt due on the first promissory note. The point for consideration before the court below was whether the second transaction amounted to a "loan". The learned Judge of the court below has held that it was. On

*Civil Revision No. 458 of 1938.
(1) I.L.R. [1938] All. 29.

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behalf of the plaintiff applicant it is urged that the view taken by the trial court was not correct.

I have arrived at the conclusion that the transaction does amount to a loan. Section 2, clause (10)(*a*) defines that "Loan means an advance to an agriculturist, whether of money or in kind, and shall include any transaction which is in substance a loan . . ." I am of opinion that in the present case the second transaction is "in substance a loan". The words "in substance" are important. I think that they mean "in effect". Now, in substance the second transaction can not be anything else but a loan. It is true that when the second promissory note was executed there was no advance in cash or in kind. But the definition of loan is not confined only to those transactions in which "an advance in cash or in kind" is made. What the court has to see is whether the transaction "in substance" is a loan or not. When the defendant executed the promissory note he admitted his liability on the basis of the prior promissory note. He agreed that the creditor was entitled to recover the amount which was due on the prior loan. The period of limitation was extended.

Learned counsel for the applicant relied on *Dharam Singh* v. *Bishan Sarup* (1). The question for decision in that case was, however, somewhat different. The learned Judges in that case made the following observations at page 32: "Now if there had been a mere promissory note and before the expiry of the period of limitation it were simply renewed, it would be difficult to hold that the renewal of the promissory note in order to save limitation would amount to a fresh advance in kind by the creditor." In the present case, no one suggests that there had been a fresh advance. In fact it is the case of both parties that there was no fresh advance. What the defendant contends is that though there was no fresh advance of cash or in kind yet the transaction is in fact a loan as in substance it is one. In my opinion this con-

(1) I.L.R. [1938] All. 29.

tention is correct. If a fresh advance in cash or in kind is made the transaction will be a loan. But the section does not say that a transaction in which no such advance is made can never be a loan. On the other hand the section is quite comprehensive and it contemplates cases in which there has been no such advance but which would nevertheless be loans. If this were not so, then there would have been no need to say in the definition "and shall include any transaction which is in substance a loan". I hold that the transaction evidenced by the second promissory note is in substance a loan within the definition given in section 2, clause (10)(*a*) of the Agriculturists' Relief Act.

The result is that the revision fails and is dismissed with costs.

MISCELLANEOUS CIVIL

Before Mr. Justice Collister and Mr. Justice Allsop

CHANDLER (PETITIONER) *v.* CHANDLER (RESPONDENT)* 1939 *May*, 1

Divorce—Alimony—Subsequent unchastity of wife—Effect on alimony—Order granting alimony not containing a dum sola et casta *clause—Such clause can not be implied.*

If there is no *dum sola et casta* clause in the order granting alimony to the wife upon her obtaining a decree absolute for divorce, such a clause can not be inferred or implied, and the order granting alimony should not be varied or discharged on the ground of subsequent unchastity of the wife.

Mr. *S. M. Faizullah,* for the applicant.

Mr. *S. N. Seth,* for the opposite party.

COLLISTER and ALLSOP, JJ.:—These are two cross petitions. One is by Annie Chandler praying that the alimony which was allowed to her by this Court be increased from Rs.12-8 per mensem to Rs.20 per mensem, and the other is by Thomas Henry Chandler praying that the order of alimony be discharged or modified on the ground of unchastity on the part of Annie Chandler.

*Application in (Matrimonial) First Appeal No. 388 of 1926.