

judgment-debtor while in arrest in execution of such decree; (ii) that the consideration for the bond in suit was expressly mentioned therein to be the decree, and not the amount of revenue said to have been paid by the defendant for the plaintiff; (iii) that even if the consideration for the bond was such amount, the bond would not be valid and enforceable at law under the circumstances under which it was executed; and (iv) that the Rs. 3 admitted to have been received by the plaintiff for the cost of the bond could not form legal and valid consideration therefor.

Pandits *Ajudhia Nath* and *Nand Lal*, for the appellant.

Munshi *Hanuman Prasad*, *Lala Jokhu Lal*, and Mr. *Simeon*, for the respondent.

The judgment of the Court (STUART, C.J., and TYRRELL, J.) was delivered by

TYRRELL, J.—We have given this case a long hearing and much consideration. The result is that we find the pleas in appeal to be valid. The bond obtained from the appellant was undoubtedly given when he was in duress, and it cannot be held that the small sum paid by the creditor for the charges of stamping and writing the document was in any legitimate sense of the phrase “consideration” for the bond. We decree the appeal with costs.

Appeal allowed

Before Mr. Justice Straight and Mr. Justice Tyrrell.

GAURA (PLAINTIFF) v. GAYADIN (DEFENDANT).*

Certificate for collection of debts—Effect of certificate against debtors—Act XXVII of 1860, s. 4—Cause of action.

A judgment-debtor sued for a declaration that the son of the deceased decree-holder, to whom a certificate had been granted under Act XXVII of 1860 in respect of the debts due to his father's estate, was not competent to apply for execution of the decree, as, being illegitimate, he was not the legal representative of the deceased decree-holder. *Held* that the suit was not maintainable, the certificate under Act XXVII of 1860 being, under s. 4 of the Act, conclusive of the defendant's representative character, and a full indemnity to all persons paying their debts to him.

* Second Appeal, No. 1005 of 1881, from a decree of Babu Prumoda Charari Banarji, Subordinate Judge of Allahabad, dated the 26th May, 1881, reversing a decree of Pandit Indar Narain, Munsif of Allahabad, dated 14th March, 1861.

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THE plaintiff in this claimed a declaration that the defendant, who had sought to execute a decree against her, was not competent to execute the same, not being the representative of the decree-holder. The decree, which was one for money, had been obtained against the plaintiff by one Banwari on the 14th March, 1879. The latter died in February, 1880, and upon his death the defendant applied, as his son and heir, to the District Court for a certificate under Act XXVII of 1860 to collect the debts due to the estate of the deceased, and obtained it on the 14th August, 1880. On the authority of this certificate the defendant applied for execution of the decree. The plaintiff opposed this application on the ground that the defendant was not the legitimate son of the deceased decree-holder; but the Court executing the decree disallowed her objection, and allowed the decree to be executed. Thereupon the plaintiff instituted the present suit. She alleged that the defendant was illegitimate and therefore not competent to execute the decree. The Court of first instance gave the plaintiff a decree. On appeal by the defendant the lower appellate Court set aside this decree and dismissed the suit, on the ground that the plaintiff had no cause of action, and the suit was therefore not maintainable. The Court observed: "I am of opinion that she (plaintiff) had no cause of action: she is admittedly liable for the amount of the decree obtained against her by Banwari: the appellant (defendant) has obtained a certificate from the Judge under Act XXVII of 1860 to realize debts due to Banwari: this certificate is, under s. 4 of the Act, conclusive of his representative title against all debtors to the deceased, and it affords full indemnity to all debtors of the deceased paying their debts to him: the respondent (plaintiff) being a debtor of the deceased, the certificate obtained by the appellant (defendant) under Act XXVII of 1860 is conclusive of his representative title as against her, and as the payment of the debt to him will under s. 4 afford full indemnity to the respondent (plaintiff), she has no reason to come to court to contest his title: her suit would perhaps have been maintainable, if it had been alleged that by reason of the appellant's illegitimacy she was not liable to pay the amount of the decree to any one and was absolved from all liability for it, but no such allegation has been made by her: this suit is therefore not maintainable."

In second appeal by the plaintiff it was contended that the fact that the defendant held a certificate under Act XXVII of 1860 did not preclude her from attacking his title to represent the decree-holder, more particularly as she had not been a party to the proceedings in which such certificate had been granted.

Munshi *Sukh Ram* and Babu *Jogindro Nath Chaudhri*, for the appellant.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*) and Babu *Ram Das Chakarbati*, for the respondent.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.,) was delivered by

STRAIGHT, J.—It is sufficient for us to say that the plaintiff-appellant had no cause of action. S 4 of Act XXVII of 1860 makes the certificate of the Judge to the defendant conclusive of his representative character, and was and is a full indemnity to all persons paying their debts to him. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

GHULAM JILANI (DEFENDANT) v. IMDAD HUSAIN (PLAINTIFF).*

Vendor and purchaser—Covenant for good title to convey—Pre-emption—Construction of covenant.

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March 25.

An instrument of sale contained the following condition:—"Should any person claim as a co-sharer or proprietor of the property, and assert his claim against the purchaser or raise any dispute of any kind, or if from any unforeseen cause the purchaser be deprived of the possession of the property or any portion thereof, or his possession thereof is disturbed in any way, then I (vendor), my heirs and assigns, shall be liable for the purchase-money, the profits of the property, and the costs of litigation." The purchaser having lost the property, by reason of a person having a right of pre-emption having sued him to enforce such right and obtained a decree, sued the vendor to recover the costs incurred by him in defending such suit, basing his claim upon the condition set forth above. *Held* that the suit was not maintainable, as such condition referred to flaws or defects in the vendor's title, and was not applicable to a loss accruing to the purchaser from his disqualification to buy.

* Second Appeal, No. 1041 of 1881, from a decree of J. Alone, Esq., Subordinate Judge of Agra, dated the 14th May, 1881, reversing a decree of Pandit Kashi Narain, Munsif of Agra, dated the 14th February, 1881.