

CIVIL JURISDICTION.

1881
April 2.*Before Mr. Justice Straight and Mr. Justice Oldfield.*

DHIRAJ KUAR (PLAINTIFF) v. BIKRAMAJIT SINGH (DEFENDANT).*

Void agreement—Immoral consideration—Agreement without consideration—Past cohabitation—Act IX of 1872 (Contract Act), ss. 2(d), 25(2).

Past cohabitation would not be an immoral consideration, if consideration it can properly be called, for a promise to pay a woman an allowance. Such a promise, however, is to be regarded as an undertaking by the promisor to compensate the promisee for past services voluntarily rendered to him, for which no consideration, as defined in the Contract Act, would be necessary.

THE plaintiff in this suit stated that she had lived with the defendant as his wife; that the defendant had agreed to allow her Rs. 2 per mensem for her maintenance; that he had paid her such allowance until the 20th August, 1880, but that from and after that date he had ceased to pay the same; and she claimed Rs. 8 being arrears of such allowance for four months. As evidence of such agreement the plaintiff produced a copy of a petition, dated the 15th November, 1876, preferred by the defendant in certain criminal proceedings, the terms of which were in effect as follows: "The petitioner had kept Dhiraj Kuar (plaintiff) for two years; it had been agreed between the petitioner and Dhiraj Kuar that he should supply her with food and raiment and keep her in his house, and that, should he turn her out of his house, he should make her an allowance of Rs. 2 per mensem." The Court of first instance (Court of Small Causes) dismissed the suit, observing as follows: "I think the agreement to pay for maintenance of the woman is void for want of valid consideration; the woman was the mistress of the defendant, and the consideration for which the agreement was made was immoral and therefore invalid."

The plaintiff applied to the High Court to revise under s. 622 of Act X of 1887 the decree of the Court of first instance, contending that the consideration for the agreement was her past cohabitation with the defendant, and such consideration was not illegal.

* Application, No. 28B. of 1881, for revision under s. 622 of Act X of 1877 of a decree of Babu Kashi Nath Biswas, Judge of the Court of Small Causes, at

1881

Munshi *Kashi Prasad*, for the plaintiff.

DHIRAJ
KUAR
v.
KRAMAJIT
SINGH.

Maulvi *Abdul Rahman*, for the defendant.

The Court (STRAIGHT, J., and OLDFIELD, J.,) delivered the following judgment:—

STRAIGHT, J.—We think it reasonable to infer that the agreement between the parties, of which the petition of the 15th November, 1876, is some evidence, was that an allowance of Rs. 2 per mensem should be paid by Bikramajit Singh to Dhiraj Kuar by way of provision for her, on account of their past cohabitation together. Such a consideration, if consideration it can properly be called, which seems to us more than doubtful, would not be immoral, so as to render the contract “*de facto*” void. But we think the more correct view is to regard the promise to pay the allowance as an undertaking on the part of Bikramajit Singh to compensate the woman for past services voluntarily rendered to him, for which no consideration, as defined in the Contract Act, would be necessary. The decision of the Small Cause Court Judge must be reversed, and the claim of the plaintiff decreed with costs. She will also get the costs of this application.

Application allowed.

FULL BENCH.

1881

May 9.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

Reference by the Board of Revenue, North-Western Provinces, under s. 46 of Act I of 1879.

Security-bond for due accounting for “property” received by virtue of office—Act I of 1879 (Stamp Act), sch. ii, No. 12 (b).

The question was whether a bond executed by the sureties of an officer of Government to secure the due execution of his office and the due accounting by him of “public moneys, deposits, notes, stamp-paper, postage labels, or *other property*” of Government committed to his charge was or was not exempted from stamp-duty by the provisions of art. 12 (b) of sch. ii of Act I of 1879, regard being had to the words “or other property.”

Per STUART, C. J., that such bond was one to secure the “due execution of an office” and the “due accounting for money received by virtue thereof,” and