

LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice, and Mr. Justice
LeRossignol.*

1925

Jan. 27.

WADHAWA MAL (PLAINTIFF) Appellant,
versus
KARIM BAKHSH AND OTHERS (DEFENDANTS)
Respondents.

Letters Patent Appeal No. 9 of 1924.

*Indian Limitation Act, IX of 1908 section 2 clause (3)—
Instrument embodying a contract to repay a loan of wheat
with interest in kind—whether a bond—Indian Stamp Act,
II of 1899, section 2 (5).*

W. M. advanced forty maunds of wheat to K. B. and others who agreed in writing to repay the same with interest in kind by the 13th of June 1918. W. M. sued more than 3 years but less than 6 years after that date for recovery of the amount due under the agreement with interest. The lower Courts decreed the claim but a Single Bench of the High Court held that the contract between the parties does not come within the definition of a "bond" as given in the Indian Limitation Act, and that the suit was consequently barred by limitation under article 65 of that Act.

Held, that having regard to the definition of a bond in the Indian Stamp Act, the instrument which is the basis of the suit, is a bond also within the meaning of the Indian Limitation Act, and that therefore the suit is within time under article 66 of that Act, as amended by the Punjab Loans Limitation Act.

Shamair Chand (with him Hargopal) for the appellant—The view of law taken by the Hon'ble Judge in Chambers is erroneous. Section 2 (3) of the Limitation Act, 1908, says that bond *includes* any instrument where by a person obliges himself to pay money to another on condition that the obligation shall be void if a specific act is performed or is not performed as the case may be.

The use of the word "includes" shows that the definition is not exhaustive. The word "includes" is meant to be illustrative and not exhaustive, per Lord Esher in *Rodger v. Harrison* (1). See also *Empress v. Ramanjiyya* (2), and *In the matter of the petition of Nasiban* (3).

1925

WADHAWA MAL
v.
KARIM BAKHSH

The word "bond" was first defined in the Indian Stamp Act, XVIII of 1869, as including any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specific act is performed or is not performed as the case may be. The same definition is contained in the Limitation Act, XV of 1877.

The Stamp Act, I of 1879, section 3 (4) gives the following definition—"Bond" means:—

- (a) any instrument whereby a person obliges himself to pay money on condition that the obligation shall be void if a specific act is performed or is not performed as the case may be;
- (b) any instrument attested by a witness and not payable to order or bearer whereby a person obliges himself to pay money to another ; and
- (c) any instrument attested by a witness whereby a person obliges himself to deliver grain or other agricultural produce to another.

The document in dispute is clearly a bond within this definition, *vide Magandas Khemchand v. Ramchandra Hiraji* (4).

In the Stamp Act, II of 1899, the same definition has been repeated with the exception that the word "means" has been replaced by the word "includes."

(1) (1893) 1. Q. B. 161, 167.

(3) (1882) I. L. R. 8 Cal. 534.

(2) (1878) I. L. R. 2 Mad. 5.

(4) (1883) I. L. R. 7 Bom. 137.

1925

WADHAWA MAL

v.

KARIM BAKHSI

This shows that the Legislature has gone on extending the definition of the word "bond." In the Limitation Act, IX of 1908, the definition of "bond" as given in the Limitation Act, XV of 1877, has been repeated. It is noteworthy that even the present definition in the Stamp Act, II of 1899, is not exhaustive. It is a principle of law that as far as possible a term used in various enactments should receive the same interpretation.

In the English Law the word "bond" is used in a very wide sense. Hurlstone defines a "bond" as an instrument under seal whereby a person becomes bound to another for the payment of a sum of money or for the performance of any other act or thing. Broom in his Common Law, 10th Edition, page 668, also defines a "bond" in similarly wide terms. The English definition was accepted by the Lahore High Court in the case of *Nand Lal v. Karam Chand* (1).

B. D. Kureshi, for the respondents—The definition in the Stamp Act is no guide for deciding the question of limitation. The guide for the purpose of limitation is the Limitation Act. This is not a solitary case where the definition of the same term in two different enactments is different. The definition of Promissory note in the Stamp Act is much wider than the definition in the Negotiable Instruments Act of 1881. The document in question is similar to the one in the case of *Gisborne and Co. v. Subal Bowri* (2). In that case the document was held not to be a bond. It is not the business of the Court to legislate. If the definition is defective the Legislature should remedy the defect. The Court should give effect to the law as it finds it.

(1) (1920) 2 Lah. L. J. 224.

(2) (1881) I. L. R. 8 Cal. 284.

Shamair Chand, replied.

1925

Appeal under clause 10 of the Letters Patent from WADHAWA MAJ
the judgment of Mr. Justice Martineau, dated the v.
 1st November 1923. KARIM BAKHSH

The judgment of the Court was delivered by—

LEROSSIGNOL J.—The point for decision in this appeal is one of limitation, and turns upon the answer to the question whether a contract to repay a loan of wheat with interest in kind, is a bond or merely an agreement. The learned Judge in Chambers, holding that the instrument, which is the basis of the suit, is not a bond as defined in section 2 of the Limitation Act has dismissed the suit with costs throughout.

Forty maunds of wheat were advanced to the defendants-respondents who agreed in writing to repay the same with interest in kind.

Admittedly the instrument is a bond as defined in section 2, clause (5) of the Stamp Act. But it is contended that as the definition found in that sub-clause is not repeated in section 2, clause (3) of the Limitation Act the instrument is not a bond for the purposes of limitation.

Neither in the Stamp Act nor in the Limitation Act is there an exhaustive and complete definition of the term 'bond'. In English law the term is given a very wide sense indeed so that it includes what under the Indian system would be called an agreement. The definition of bond in English law is 'any instrument under seal whereby one person becomes bound to another for the payment of any sum of money or for the performance of any other act or thing'. The formality of sealing instruments is not observed in India, and it is quite clear that the English definition of a bond can furnish us with no guidance in the deci-

1925
 WADHAWA MAL
 v.
 KARIM BAKHSI

sion of this point. Wharton defines a bond as an instrument by which one person binds himself to pay a debt; and the same authority defines the term 'debt' as a sum of money due from one person to another. Judged by this definition the instrument before us inasmuch as it provides for the payment not of a sum of money but of a quantity of grain is not a bond.

The Stamp Act of 1869 defined a bond in the words now to be found in the Limitation Act of 1908. That definition is as follows—

“Bond” includes any instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

and this definition was to be found in the earlier Limitation Act of 1877. In the Stamp Act of 1879 the definition of 'bond' was as follows:—

“Bond” means:—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(This clause merely reproduced the definition of the Act of 1869, but the word 'means' was substituted for the word 'includes'.)

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

In the present Stamp Act of 1899 the definition of the bond is the same as in the previous Act with the exception that the word 'means' has been discarded and the word 'includes' restored.

1925

WADHAWA MAL
v.
KARIM BAKHSI

From the foregoing it is clear that the definition of the term 'bond' even in the present Stamp Act is not exhaustive, and that the term in the course of years has been extended so as to include instruments which might not have fallen under the earlier definition. Indeed it is difficult to understand why in the instruments described in clauses (b) and (c) attestation should be regarded as essential and not so in the instruments described in clause (a).

It has been urged that inasmuch as in the definition incorporated in the Limitation Act only the instruments described in clause (a) have been specifically referred to, it was the intention of the Legislature that the instruments described in clauses (b) and (c) should not be regarded as bonds for the purposes of limitation. But we hold that this is by no means a necessary inference, for when the Indian Limitation Act was amended in 1908 it is possible that the need for a further definition of the term 'bond' was overlooked or, in view of the difficulty of finding a concise and exhaustive definition of the term it was decided to retain the original elastic and unexhaustive definition. The argument, therefore, is not conclusive. But there is another principle which, we think, furnishes us with reliable guidance in a case of this sort, and that is, that the language of every enactment must be construed as far as possible in accordance with the terms of every other statute which it does not expressly modify or repeal. Here we find that the Legislature in one of its enactments, that is, the Stamp Act, without giving any exhaustive definition of the term 'bond' has directed that a certain type of instru-

1925

WADHAWA MAJ

v.
KARIM BAKHSI

ment shall for the purpose of the levy of stamp duty be classed as a bond and, in the absence of any indication to the contrary, we must hold that the Legislature regards such an instrument as a bond within the meaning of another of its enactments, namely, that of limitation. Considerations of convenience also point to such a conclusion, for to treat an instrument as a bond for one purpose and as an agreement for another purpose could give rise to nothing but inconvenience and confusion.

For these reasons we hold that the instrument which is the basis of this suit falls within the definition of a bond for the purposes of the Limitation Act and that the suit was within time. We accordingly accept this appeal with all costs in the High Court and restore the decree of the District Judge.

A. N. C.

Appeal accepted.
