[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

NA'NA' BIN LAKSHMAN AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS *v.* ANANT BA'BA'JI (ORIGINAL PLAINTIFF), RESPONDENT.* 1877. September 19.

Optional registration—Act XVI. of 1864, Section 13—Act XX. of 1866, Section 17, Act VIII. of 1871, Section 17—Determination of value—Consideration.

The value of the right, title, or interest created by a mortgage is estimated by the amount of the principal money thereby secured.

The words "or in future" in section 17 of Act XX. of 1866 and section 17 of Act VIII. of 1871 have reference to estates in remainder or in reversion in immoveable property, or to estates otherwise deferred in enjoyment, and not to interest payable in future on principal moneys lent on the security of immoveable property.

Darshan Singh v. *Hanwanta* (I. L. R. 1 All. 274) dissented from.

PLAINTIFF sued on a mortgage deed, dated the 1st November 1867. The mortgage was for a sum of Rs. 95, with interest at Rs. 1-9 per cent. per mensem—*i.e.*, upwards of 18 per cent. per annum—and not redeemable for five years from the date of its execution. Defendants contended that the right, title, or interest created by the mortgage exceeded Rs. 100 in value, and, therefore, according to Act XX. of 1866, section 17, clause 2, the document required registration, and not having been registered, could not law fully be received in evidence, or acted on by any Court, under section 49 of that Act.

The Subordinate Judge of Khed held that the defendants were right in their contention; but this decree was reversed on appeal by W. H. Newnham, Acting District Judge of Puna. The defendants thereupon preferred this special appeal to the High Court.

Shántárám Náráyan for the appellants.

There was no appearance on behalf of the respondent.

WESTROPP, C.J.:—On behalf of the defendants it is contended that as the mortgage (exhibit 3) of the 1st November 1[illegible] was for a sum of Rs. 95, with interest at Rs. 1-9 p[illegible] per mensem—*i. e.*, upwards of 18 per cent. per annum, not redeemable for five years f[illegible] its date, the righ[illegible]

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interest thereby created exceeded Rs. 100 in value, and, therefore, according to Act XX. of 1866, section 17, clause 2, required registration, not having been registered, could not lawfully be received in evidence, or acted on by the lower Court (section 49). In support of this contention, *Darshan Singh* v. *Hanwantá* [1] was cited. The Court, in its judgment in that case, stated that the instrument, the necessity for registration of which was there in question, "secured the repayment of Rs. 99 plus Rs. 6, the interest for three months." Hence we infer that the whole consideration, shown by the instrument to have been received by the mortgagor, was Rs. 99. The statement of facts made by the reporter, though not quite so clear on that point as might be, leads us to the same conclusion. If we be right in inferring that the mortgagor did not receive any larger consideration than Rs. 99, we are unable to concur in the decision of the High Court at Allahabad, that, assuming the instrument to charge the mortgagor's immoveable property, registration was compulsory. That decision was rested on the ground that Rs. 99 plus Rs. 6, the interest for three months, "was the least sum that could have been recovered under the instrument." The registration value was there gauged, not by what the mortgagor received from the mortgagee as consideration for granting the alleged mortgage, but by what the Court regarded as the minimum sum which the mortgagee could have recovered under it. In this Court, however, in considering whether a mortgage is of the value of Rs. 100 or upwards, the value of "the right, title, or interest" created by the mortgage has always been estimated by the amount of the principal money thereby secured: that being assumed to be the sum received by the mortgagor as consideration for making the grant by way of mortgage, or, so to speak, the purchase money of the mortgage. When it is necessary to determine whether an instrument, other than a deed of gift, purports or operates to create, &c., any right, title, or interest of the value of Rs. 100 or upwards, to or in immoveable property, the test of value which we adopt is the consideration stated in the instrument, whether it be one of sale or of mortgage, to be given by the mortgagor, and not either the minimum, or maximum, o

other benefit which may result from the transaction to the grantee, whether he be vendee or mortgagee. There are reported cases in which the High Court of Calcutta (*Rohinee Debia* v. *Shib Chunder Chatterjee* [1] and this Court (*Vásudev Moreshvar* v. *Rámá Bábáji*,[2] *Sátrá Kámáji* v. *Vishrám*[3]) have ruled that the purchase money mentioned in a deed of sale must be regarded as showing the value of the interest conveyed, for the purpose of determining whether or not the registration is compulsory. The circumstance that there is nothing in the terms of the Registration Acts to impose upon the Courts the duty of instituting any inquiry, as to the actual value of an interest in immoveable property affected by an unregistered instrument, previously to the admission of that instrument in evidence, and the many and great inconveniences and difficulties which would attend upon such an inquiry, are clearly pointed out in the judgments of Ainslie and Loch, JJ., in the first mentioned of those cases. There is nought in those Acts to suggest that there should be one mode of ascertaining the value in the case of deeds of sale, and another for testing the value in the case of a deed of mortgage, or of rent charge, or of annuity, or creating or conveying any other minor interest in, or charge or incumbrance upon, immoveable property. We do not know any good reason for making such a distinction, and can perceive many for refraining from its introduction. If the necessity for registration of a mortgage is to be ascertained, not by the consideration given by the mortgagee for it, but by the actual value of the transaction to the mortgagee, the test would, at the time of making the contract and when the parties would most need to know whether the mortgage must be registered, be wholly impracticable if the interest, or profits in lieu of interest, receivable by the mortgagee is to form one of the elements of value. The rate of interest might, of course, and usually would be then fixed, but the amount of it could only be known when the mortgage was redeemed or foreclosed. The time of redemption or foreclosure would depend on the convenience or convenience of the parties or of one of them. Why first three or six months' interest, merely because

(1) 15 Calc. W. R. 558 Civ. Rul.

(2) 11 Bom. H. Rep. 149. (3) I. L. R.

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noticed in the mortgage, be taken into account more than any subsequent interest receivable by the mortgagee? If the mortgagee be not entitled to interest under the mortgage, and the stipulation be that, in lieu thereof, he is to enter into occupation of the land and to cultivate it, and retain the profits arising from the cultivation, how, at the date of the contract, could the actual value of the mortgage to the mortgagee be ascertained? These are amongst the grounds upon which rests the practice, which has uniformly prevailed here, of estimating the value of a mortgage as well under Act XVI. of 1864, Act XX. of 1866, and Act VIII. of 1871 by the amount of the principal money lent, and without any regard to the duration of the relation of mortgagor and mortgagee, or to the rate or continuance of the interest payable. Had we put a different construction on section 13 of Act XVI. of 1864, section 17 of Act XX. of 1866, or section 17 of Act VIII. of 1871, we should, we think, have converted those enactments into so many traps for the unwary, which could not have been the intention of the Indian Legislature. The words "or in future," which occur in the two last-mentioned enactments, have reference, as we think, to estates in remainder or in reversion in immoveable property, or to estates otherwise deferred in enjoyment, and not to interest payable in future on principal moneys lent on the security of immoveable property. For these reasons we must affirm the decree of the District Judge.

Decree affirmed.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

DULSOOK RATTANCHAND (PLAINTIFF) *v.* CHUGON NARRUN AND ANOTHER (DEFENDANTS).*

...n Act IX. of 1871, Schedule II., Articles 75 and 167—Decrees payable by ...s—Limitation Act XV. of 1877, Schedule II., Article 179, Clause 6.

...able by instalments, with a proviso that in default of payment of ... the whole amount of the decree shall become payable at once, is ...n for execution be not made within three years from the date ...lment fell due and was not paid.

...se Court Reference No. 101 of 1877.