

was still due, and awarded redemption on payment of that sum, Rs. 568-9-8 having been made payable to the sub-mortgagee, the appellant Umarkhán, and Rs. 584-5-8 to the defendants Mahádev, Moro, and Balkrishna, of whom Moro has appealed. The lower Appellate Court ordered payment of the Rs. 200 found to be due on the mortgage to Umarkhán, who is in possession of the land in suit, under a decree for Rs. 568-9-8 obtained by him against the paternal uncle of defendants Nos. 1 and 2. Umarkhán denies that plaintiff has any right to redeem at all, and both Umarkhán and Moro contend that the whole of the original mortgage-debt is still due, and that no part of the property originally mortgaged was ever redeemed by Daryákhán. They ask, in effect, that the plaintiff's claim, if admissible at all, should be adjudicated with reference to the original mortgage-bond, and not with reference to the assignment of Daryákhán's equity of redemption, relied on by the plaintiffs; and each of the appeals is therefore, in my opinion, properly chargeable with a fee calculated on the "principal money expressed to be secured by the instrument of mortgage." In this view I affirm the decision of the Taxing Officer.

1885.

UMARKHÁN
v.
MAHOMED-
KHÁN AND
OTHERS.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt, Chief Justice, Mr. Justice Nánábhái Haridás, and Mr. Justice Birdwood.

SHA'BUDIN MAHOMED, PLAINTIFF, v. HIRNAK RAJNAK AND OTHERS, DEFENDANTS.*

1885.
July 9.

Stamp Act I of 1879, Sec. 7—Contracts for several loans of rice on a single bond—Construction.

Sixteen persons borrowed a quantity of rice from the plaintiff, and executed to him a bond for the debt, showing how much rice had been borrowed by each of them. They did not bind themselves to repay the entire debt jointly and severally.

Held, that the instrument should be regarded as comprising sixteen distinct contracts, so as to fall within the purview of section 7 of the Stamp Act I of 1879, and should be stamped accordingly.

* Civil Reference, No. 8 of 1885.

1885.

SHÁBUDIN
MAHOMED
v.
HIRNAK
RAJNAK
AND OTHERS.

THIS was a reference by Ráo Sáheb Sakháram M. Chitalé, Subordinate Judge of Mahád, under section 49 of the Stamp Act I of 1879.

The reference runs as follows :—

“ The plaintiff sues to recover from the defendants one *khandi* of rice in husk, or Rs. 60 as its price, together with the costs of this suit, on a bond dated *Jeshta Shudha* 14th of *Shake* 1802 (corresponding with the 21st of June 1880).

“ The bond (marked A), on which the plaintiff has based his claim, has been written on a stamp paper of the value of eight annas only. The question that has arisen is as to whether the bond has been properly stamped.

“ It appears from the bond that some sixteen persons borrowed two *khandis* of rice in husk from the plaintiff, and executed to him the bond marked A. Two other persons have executed the bond as sureties. The bond shows how much rice was borrowed by each of the sixteen debtors. The obligors of the bond do not bind themselves to repay the entire debt jointly and severally. I, therefore, think that the agreement of each of the debtors to repay the amount written against his name in the bond must be regarded as a separate contract, within the meaning of section 7 of Act I of 1879, and that the bond marked A is chargeable with the aggregate amount of duties which would have been payable if the sixteen debtors had executed sixteen bonds separately. Had the sixteen debtors jointly and severally bound themselves to repay the entire debt, the case would have been very different.

“ I, however, entertain a doubt as to the correctness of my opinion; and as the question has arisen in one other suit of this nature, I think it proper to refer the following question for the opinion of the Honourable High Court, under section 49 of the Indian Stamp Act of 1879, *viz.*,

“ Whether the bond, marked A, hereto annexed has been properly stamped, and, if not, what is the proper duty with which it is chargeable ?

"I am of opinion that the bond is not properly stamped, and that it is chargeable with the aggregate amount of duties which would have been payable if the sixteen debtors had executed sixteen separate bonds with respect to the rice lent to each of them."

There was no appearance for the parties.

SARGENT, C. J.—The instrument must, we think, upon the proper construction of it, be regarded as comprising sixteen distinct contracts of loan for the several quantities of *bhāt* or paddy mentioned in the particulars, and, therefore, includes sixteen distinct matters within the contemplation of section 7 of Act I of 1879, and must be stamped accordingly.

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

PURMA'NANDDA'S JIWANDA'S, (ORIGINAL PLAINTIFF), APPELLANT,
v. JAMNA'BA'I, WIDOW OF MORA'RJI NA'NJI AND ADMINISTRATRIX
OF UDHA' NA'NJI AND NA'NUBA'I.*

1885.
July 31;
August 7 and
14.

Mortgage—Sale to mortgagee under power of sale—Effect of such purchase by mortgagee—Title acquired by him—Adverse possession by persons claiming a lien as against mortgagor—Limitation.

A mortgagee purchasing the mortgaged property with the consent of the mortgagor, under the power of sale contained in the mortgage deed, acquires an unimpeachable title derived from the power of sale, which is altogether distinct from and overrides his title as a mere incumbrancer: the effect of such purchase being to vest the ownership of, and the beneficial title to, the property for the first time in himself, who had been previously a mere incumbrancer.

Obstruction to the obtaining possession by a mortgagee under his mortgage by persons who while claiming a lien on the property admitted the mortgagor's title to the property, *held* not to be adverse possession as against the mortgagee's title as purchaser.

THE plaintiff in this suit was the assignee of a mortgage (dated 16th March, 1867,) of an undivided moiety of certain land with a dwelling-house thereon. The mortgagor having failed to pay the mortgage debt, the plaintiff on the 24th April, 1872, under a power of sale contained in the mortgage deed, put up the mort-

* Suit, No. 84 of 1882.