

1868
 IN RE GAJA-
 DHAR PRASAD
 NARAYAN
 SING.

the whole of the provisions of these sections have become a nullity. The question is not before us, and, therefore, I do not think I am compelled to give my opinion as to whether or not the Judge had the power to make an order for the attachment of movable and immovable property of the appellant in this case to such an amount as he should deem reasonable, not being in excess of the amount of the costs of attachment. But I entirely go with Mr. Justice Phear, that the Judge had not the power, as that law at present stands, to go further and to inflict a fine. That fine could only have been inflicted under the provisions of section 28, Act XIX. of 1853, and the provisions of that section have been repealed, as to proceedings under Act VIII. of 1859, by Act X. of 1861. It follows, therefore, that as the Judge had no power to inflict the fine, we must direct that that fine be remitted.

Before Mr. Justice Kemp and Mr. Justice E. Jackson,

GOPAL PRASAD v. NANDARANI.*

Registration—Act XVI. of 1864, s. 13—Deed of Mortgage—Evidence.

1868
 Aug. 14.

A. executed an instrument in favor of B., thereby covenanting to repay B. the amount of a loan together with interest, and mortgaging certain immovable property as security for repayment of the same. B. sued A. for the debt. *Held*, that the instrument did not directly create, declare, transfer, or extinguish any right or title in immovable property; the land was mentioned as a collateral security, and, therefore, the instrument was not inadmissible in evidence under section 13 of Act XVI. of 1864.

This was a suit to recover Rs. 989-12-3, being the amount of principal and interest due on a bond, dated 29th Magh 1272, (11th March 1865), executed by the defendant, Nandarani, in favor of the plaintiff. The plaintiff prayed for a decree for the amount of the principal and interest.

The following is a translation of the bond (*Tamassuk*):

“I, Mussamat Nandarani Kunwar, inhabitant of, and shareholder in Mouza Bariarpore Bandh, and shareholder in Bagi Gopalpore Gopinath, in Chakla Garjol, Pergunna Bisara. Whereas

* Special Appeal, No. 880 of 1868, from a decree passed by the Additional Judge of Tirhoot, reversing a decree of the Sudder Amoen of that district.

I, for the purpose of paying off my debts, and also for necessary expenses, have borrowed Rs. 975, from Moonshi Gopal Prasad ; therefore I covenant and agree that I will repay the amount, with interest at 2 per cent. *per mensem*, on the Purnamasi (Full Moon) of Phalgun 1272 Fasli, (1865), and take back this bond. And until the repayment of the said amount of principal and interest, my shares which I inherited from my mother, and of which I am in possession, of the property mentioned below, I pledge (*Mutfool*) and mortgage (*Must-guruk*) the same. In no way and by no means shall I, by any instrument in writing, sell or mortgage the same. If I do so, the act will be invalid. Therefore, I execute this bond that it may be of service in time of need."

1868
 GOPAL
 PRASAD
 v.
 NANDARANI.

Nandarani Kunwar raised the defence (*inter alia*) that under section 13 of Act XVI. of 1864 the suit would not lie, as the deed had not been registered.

The Sudder Ameen held, that section 13 of Act XVI. of 1864, was not applicable, and gave a decree to the plaintiff for the amount claimed, and declared that on failure of payment by the defendant, the plaintiff was entitled to realize the amount decreed out of the profits of the property given in security.

On appeal, the Judge held, that the instrument was not a mere bond ; it pledged in security for the loan certain landed property belonging to the borrower ; such a deed was not one of which the registration was optional under section 13 of Act XVI. of 1864 ; and inasmuch as the property might be sold in satisfaction of the debt due upon the bond, the instrument came within the purview of section 13. He reversed the decision of the lower Court.

The plaintiff appealed to the High Court.

Baboo *Bama Charan Banerjee*, for appellant, contended that the document in question was not of a nature which rendered registration compulsory, and it was therefore admissible in evidence,—*Udaya Chand Jana v. Nitar Mandal* (1). At least, it was admissible for the purpose of trying the case as a suit for money lent,

(1) 9 W. R., 111.

1868

 GOPAL
 PRASAD
 v.
 NANDARANI.

Baboo *Kali Krishna Sen* for respondent.—The bond created, if not a present, at least a future and contingent right to land. After the execution of the bond, defendant's right to deal with the property had been extinguished, or survived only to the extent of creating any incumbrance subject to the plaintiff's lien. The case of *Udaya Chand' Jana v. Nitai Mandal* (1) is not applicable. There the suit was brought in a Court (Small Cause Court) which had no jurisdiction to pass an order regarding real property.

The judgment of the Court was delivered by

JACKSON, J.—The lower Appellate Court has dismissed the plaintiff's suit, which was to recover a certain sum of money due upon a bond, on the ground that this bond ought to have been registered, and that it was not registered. The bond appears to have stated not only that the money would be repaid, but also that certain lands should be held to be pledged for the repayment of the loan in case it was not paid. The question at issue is, whether a bond of this description must be registered or not under section 13 of Act XVI. of 1864.

In *Udaya Chand Jana v. Nitai Mandal* (1), it was held that the registration of such a bond was not compulsory. It appears to us also, that this document does not directly create, declare, transfer or extinguish any right or title in immovable property. The land is mentioned in the bond as collateral security. But the bond goes no further. It follows that the registration of the bond was not compulsory. Holding this opinion, we think that the Judge should have proceeded to try the questions raised by the plaintiff on the merits. We, therefore, remand this case to the lower Appellate Court for trial on the merits, and a fresh decision.

(1) 9 W. R., 111.