

1869

August 2.

*In re INDIAN REGISTRATION ACT 1866, and in the
matter of the petition of GANPAT MANIKJI PATIL.*

Registration—Bond—Instalment—Agreement that on non-payment of interest the whole debt should become due—Act XX. of 1866, secs. 52 and 53.

A bond payable two years after date, contained a stipulation that in case of default being made in payment of interest on the principal sum secured; the principal sum, with interest up to the due date of the bond should at once become payable. The bond was specially registered under sec. 52 of the Indian Registration Act 1866.

Held, that such an agreement did not come strictly within the words of secs 52 and 53 of the Act and could not therefore, be summarily enforced by petition under sec. 53.

This was an application made to Westropp, J., in Chambers, on the 22nd of July 1869, under sec. 53 of the Indian Registration Act, 1866. for an order to draw up a decree in favour of the petitioner and against the defendants for Rs. 8,400 and cos's.

The petition, upon which the order was sought, stated, that the defendants, on the 8th of April 1868, executed a mortgage deed to secure payment to the petitioner of the principal sum of Rs. 7,000 and interest, and thereby covenanted with the petitioner to pay him the said sum of Rs. 7,000 on the 8th of April 1870, and to pay interest thereon at the rate of Rs. 1 per cent. per mensem monthly, and further agreed that, in default of payment of any one instalment, the whole amount of principal, and interest thereon up to the 8th of April 1870 should be paid at once.

That, endorsed on the mortgage bond, was an agreement in the following words. "It is agreed between Tulsiram Vittoji, Ramji Vittoji, and Bhikaji Vittoji, the obligors, and Ganpat Manikji, the obligee of the above obligation, that, in the event of the obligation not being duly satisfied, the amount secured thereby may be summarily recovered in the manner prescribed in sec. 53 of the Indian Registration Act 1866." The deed, with the above endorsement, was duly registered on the 8th April 1868.

That default in payment of the interest having been made, the whole amount of principal and interest thereunder became due on the 8th of September 1868, that demand for payment thereof was made upon the defendants, but that they did not pay the same or any part thereof, and that, at the date of the presentment of the petition, there was due on foot of the mortgage the sum of Rs. 7,000, as principal, and Rs. 1,400 as interest, calculated up to the 8th of April 1870.

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Mr. Green, of the firm of Macfarlane and Green, appeared for the plaintiff.

WESTROFF, J., took time to consider whether he would make the order prayed for, and on the 2nd of August rejected the petition, saying :

When this petition was presented to me I expressed a doubt to Mr. Green as to the case stated, in it falling within Sec. 53 of the Indian Registration Act of 1866. In order to entitle the mortgagee now to recover the whole amount of principal, and interest up to the 8th of April 1870, it would be necessary for him to produce evidence, beyond the mortgage deed itself, to show default in payment of one of the monthly instalments of interest payable by the mortgagor. A somewhat similar petition (a) was lately presented to Phear, J., in Calcutta, upon a Bengali bond, stipulating that the principal secured thereby should be payable by instalments, and that, in case of default in payment of any two successive instalments, the whole amount secured should become due. Phear, J., refused to receive the petition, because it could not be known, without evidence, besides the deed, whether or not the contingency had happened, upon the occurrence of which the whole debt sought to be recovered became due. He thought the summary remedy given by Sec. 53 of the Act, did not apply, when the plaintiff's claim required other proof than that furnished by the registered deed. That decision was affirmed on

(a) 11 Calc. W. Rep. App. Or. Civ. Jur. 24, 25, 26; S. C. 2 Beng. L. R. Orig. Jur. Civ. 151 (*In re* Luchmiput Sing Dogar Roy Bahadur)

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appeal; Peacock, C. J., said: 'There are two classes of cases mentioned in the section; one where the whole amount becomes due; and the other where any instalment, when the amount is payable by instalments, becomes due; but the third case is not mentioned, viz., where the *whole amount* of the bond becomes payable by reason of an instalment not having been paid.' He adds, 'the petitioner might produce ten witnesses to show that it had not been paid, and the defendant ten witnesses to prove that it had. In that case, if the evidence were gone into in a suit for the whole amount of the bond, there is no doubt that an appeal would lie, if the case were tried by a single Judge; but if the case comes within the Registration Act, no appeal would lie if the Judge should decide that the instalment had not been paid (b). It appears, therefore, to me that we ought not to extend the meaning of Sec. 53, which gives a summary remedy without appeal, by holding it to extend to cases which do not fall strictly within the words of the Act.' Macpherson, J., was of the same opinion, and said that he thought 'that the summary procedure is confined to the two classes of cases specified in Section 53 of the Act.' Fully concurring in the decision in that case, and in the reasons given for it, which seem to me to be applicable to the present case, I must reject the petition, and leave the mortgagee to his remedy by ordinary civil suit.

Petition rejected.

Attorneys for the petitioner—*Macfarlane and Green.*

(b) Sec. 55.