

which would justify the Court in going behind the bonds to consider the circumstances out of which they sprung, albeit those circumstances might themselves at the time have constituted a cause of action. A case of two promissory notes passed under similar circumstances to the present bond, and decided by the Small Cause Court of Calcutta against the plaintiff, has been referred to; but it is to be remarked that the language of the above section is very different from that of section 34 of the Presidency Small Cause Court Act of 1850 on which the Court doubtless acted, and which is not found in the Mofussil Small Cause Courts' Act. That section forbids a "plaintiff's dividing any cause of action for the sake of bringing two or more suits in those Courts," and might possibly enable the Court to regard what was done in that case at the time of passing the notes as a violation of that section. The question must, therefore, be answered in the negative.

1883

UMED
DHOLCHAND
v.
PIR SAEED
JIVA MIYA.

(26)

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Melville, and
Mr. Justice Kembell.*

MAGANDAS KHEMCHAND, PLAINTIFF, v. RAMCHANDRA
HIRAJI, DEFENDANT.*

1883

January 16.

*Stamp—Loan of grain in consideration of repaying a larger measure of grain—
Bond—Agreement—Act I of 1879, Sec. 3 (4) (b).*

An attested instrument, in which the obligor states that he borrowed a certain quantity of grain from the obligee and agreed to repay it at a future time in greater quantity, is a bond within the meaning of section 3 (4) (b) of Act I of 1879, although the instrument is silent as to the money value of the grain. Where the value of such an instrument was ascertained to be less than Rs. 10, it was held to be properly stamped as a bond with a stamp of annas 2.

THIS was a reference, under section 49 of the Stamp Act I of 1879, by Rao Saheb K. B. Marathé, Subordinate Judge of Amalner.

"The defendant executed the following instrument in favour of the plaintiff:—

* Civil Reference, No. 63 of 1882.

1883

MAGANDAS
KHEMCHANDRAM-
CHANDRA
HIRAJI.

“ Food bond, dated Shake 1803, Vrisha nama Sanvatsare (in the year of the name of Vrisha) Shravan Shud 11. On this day, to the creditor Hirachand Khemchand Sa Bhai of the shop at Amalner, the debtor Ramchandra valad Hirajichandhri, residing at Mauze Nandgaon, pargana and taluka of Amalner, in the Fasli year 1291. I have borrowed of you for my own purpose food grain, jowari $3\frac{1}{2}$ *dolas** as principal, with profit of a half as much, namely $1\frac{3}{4}$ *dolas*, making up a total of $5\frac{1}{4}$ *dolas*, in words five and a quarter *dolas*. In consideration of this (loan, I make) an agreement, that in Margashirsha of the current year I shall bring to you at Amalner clean jowari of the best sort measured by double measures at the rate of 48 measures to one ‘*māp*’. I shall measure it out to you. If I do not pay at the agreed time, and if the grain should remain unpaid (after the agreed time), I shall pay profit (increase) at the rate of a half as much for each year (that the grain should remain unpaid) until payment. I shall make no contest on demand. This food bond I have executed with willingness and pleasure, intelligence and consciousness, without intoxication, this day, the 20th August, 1881, in the handwriting of Lilachand Narayandas of Amalner.’

“ This instrument was stamped with a two-anna stamp. The plaintiff sued the defendant upon it in the Court of the Subordinate Judge of Amalner, and the defendant contended that it was an ‘agreement’ and should have borne a stamp of annas eight. The Subordinate Judge agreed with that contention. He said : ‘ The principal debt mentioned in the instrument, if it be valued according to the market value of the promised corn at the time of its execution, would certainly be equivalent to a sum less than Rs. 10, and the plaintiff’s contention is that he should be allowed the benefit of section 26 of the Stamp Act. I believe that this section provides for such subjects of contracts as are incapable of being adequately or with any sort of certainty valued in money. The grain which forms the consideration for the plaintiff’s instrument could, of course, be exactly appraised at the time of the bond, if the plaintiff were to take the trouble of so appraising it. The plaintiff elected to put on paper the defendant’s promise to give grain for some indefinite thing, and

* NOTE.—A *dola* is equivalent to 16 seers.

therefore, I believe that the document in question is no bond, but a simple agreement to give one thing for another.'

"In *Chinnaji v. Ranu* (1) the High Court decided that an instrument containing a promise to deliver grain should be stamped with an eight-anna stamp; and the document in question would under the same ruling require a similar stamp; but this ruling was under the Stamp Act XVIII of 1869, sec. 14, Sch. II, art. 11. In the Act of 1879 the word 'bond' is defined thus in section 3 (4) (b):—'Any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another.'

"This definition does not disclose whether the promise should be supported by a pecuniary consideration; but section 27 strictly enjoins that all facts and circumstances affecting the chargeability of any instrument with duty or the amount, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. The plaintiff having failed to do this, the accompanying instrument can, at best, be regarded as a simple agreement chargeable with an eight-anna stamp."

There was no appearance in the High Court on behalf of any party.

SARGENT, C. J.—The document is apparently a bond, and properly stamped with a two-anna stamp.

(1) I. L. R., 4 Bom., 19.

(27)

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kembal.

KANAYALAL (ORIGINAL PLAINTIFF), APPELLANT, v. PYARABAI WIDOW OF RAMNARAYAN AND OTHERS (ORIGINAL DEFENDANTS) RESPONDENTS.*

Mortgage—Conditional sale—Redemption—Foreclosure—Evidence—Secondary evidence—Evidence Act (I of 1872), Sec. 63.

1882
April 19.

In 1840 K. mortgaged a certain house to two brothers, R. and C. The mortgage deed contained a *gahan lakan* clause, or clause of conditional sale. It appeared that in 1852 the mortgaged house passed into the possession of R. and C., and it was alleged that in that year the mortgage had been foreclosed. At a subsequent

* Second Appeal, No. 309 of 1881.

1883
MAGANDAS
KHEMCHAND
v.
RAM-
CHANDRA
HIRAJI.