Present: Mr. Justice Middleton.

1908.
March 6.

SUPPRAMANIAPILLAI *v.* KALIKUTTY.

C. R., Batticaloa, 12,626.

"Bond," meaning of—Prescription—Agreement to deliver movable property—Ordinance No. 22 of 1871.

Where the defendant having borrowed a certain quantity of paddy from the plaintiff agreed by a notarially attested document, stamped as an agreement, to return the said quantity of paddy, together with an additional quantity by way of profit, and in default of such delivery, to pay the value thereof,—

Held, that the said agreement was a "bond" within the meaning of section 6 of the Prescription Ordinance (No. 22 of 1871), and was prescribed in ten years.

Tissera v. Tissera [1] followed.

THE plaintiff sued the defendant to recover a sum of Rs. 260 and interest alleged to be due on an agreement, which was as follows:—

"The 2nd day of August 1900. I, Sinnetamby Kalikutty of Mangentoduvai in Manmunai pattu, Batticaloa, have justly and truly borrowed and received from Settiyar Suppramaniapillai of Arappattai, in the said pattu, a quantity of ten amunams of paddy. Its present value is rupees one hundred. To this ten amunams of paddy of this value, adding five amunams of paddy, being profit at the rate of 50 per cent. per annum, the total quantity of principal and profit fifteen amunams of paddy, free of damage, chaff, and cheenatty, measuring with a marakal exactly holding seven peers, I shall deliver to the said Suppramaniapillai or to his legal heirs, &c., in one instalment within the month of June, 1901, next ensuing, at the threshing-floor of Natkaranvely, and defray the expenses of removing the same by cart to Vadankaraiturai, cause endorsement be made in this and redeem this deed. In default, adding the profit mentioned herein for the said term with further profit on the said principal quantity of ten amunams of paddy at the aforesaid rate of 50 per cent. per annum from the date of default till recovery, he may sue me at law for the value of the total quantity of principal and accrued profit paddy, calculating value at the rate paddy may be selling at Puliyantivu at the time of action, and recover the same from me and from all the property whatsoever belonging to me. Hereby renouncing the benefit of contesting that I did not measure and receive the said paddy I set my signature to this and grant this deed.

"(Signed) S. KALIKUTTY.
"(Signed) N. D. N. SINNETAMBY,
"Notary Public."

[1] *(1896) 2 N. L. R. 238.*

1908.
March 6.

The agreement was dated August 2, 1900, and the action was instituted on August 1, 1907. The defendant pleaded that the plaintiff's claim was prescribed under section 7 of Ordinance No. 22 of 1871.

The Commissioner of Requests (G. W. Woodhouse, Esq.) held as follows (October 3, 1907):—

"This is an action on a notarially attested instrument whereby defendant agrees to deliver certain paddy to the plaintiff in June, 1901. The defendant pleads prescription. The question is whether the plaintiff's claim falls under section 6 or under section 7 of Ordinance No. 23 of 1871. If it falls under section 6, of course the claim is not prescribed, and plaintiff would be entitled to judgment. The authority quoted by Mr. Kadramer (*1 S. C. R. 142*) was an action on a notarially attested document, a dowry deed, where the defendants undertook to deliver certain movables by a certain date. The defendants (in that case) having failed to deliver some of the goods on the appointed date, the donees instituted an action.

"It was held in appeal that as 'section 6 applies to what are technically called bonds, either mortgage bond or bonds conditioned for the payment of money or the performance of an agreement, the deed in question does not fall under either of these heads. It is a simple promise to deliver certain movable property within a given time. That being so, it more properly falls within what in section 7 is called a written promise, and is prescribed.'

"The authority quoted by Mr. Setukavaler (*2 N. L. R. 238*) refers to a notarially attested writing, but clearly conditioned for the payment of money. There can be no doubt that such an instrument must fall under section 6 of the Ordinance.

"In my opinion the document we have to deal with in this case, though notarially attested, is not an agreement conditioned for the payment of money. It is an agreement to deliver certain movables, namely, paddy, by a certain date; that being so, the case seems to me to be on all fours with the case cited by Mr. Kadramer. It is true that in this district most of the so-called debt bonds refer to paddy, paddy being to a great extent the circulating medium amongst us; still I do not think that fact would take the case out of the category of agreements to deliver movables.

"I would dismiss plaintiff's action with costs."

The plaintiff appealed.

Bawa, for the plaintiff, appellant.

Prins, for the defendant, respondent.

Cur. adv. vult.

March 6, 1908, MIDDLETON J.— *1908. March 6.*

This was an action on what is described in the plaint as a notarial bond dated August 2, 1900, for the recovery of Rs. 260, value of 20 amunams of paddy alleged to be due thereon. The only question in the case, which also composed the only issue, was whether the bond is prescribed. If it is an instrument such as comes within the description of those contemplated by section 6 of Ordinance No. 22 of 1871, the plaintiff is entitled to sue on it within ten years from the time limited in the section; but if it is an instrument such as is contemplated by section 7, then the limit of time for suing on it is reduced to six years.

The Commissioner of Requests held that it fell within section 7 of the Ordinance, mainly on the ground that the facts appeared to be on all fours with the case reported at page 42 of *1 Supreme Court Reports*, and dismissed the plaintiff's action.

The document in question marked A was as follows, according to the translation in the record:—

"*Debt No. 1,153.*

"The 2nd day of August, 1900. I, Sinnetamby **Kalikutty** of Mangentoduvai in Manmunai pattu, Batticaloa, have justly and truly borrowed and received from Settiyar Suppramaniapillai of Arappattai, in the said pattu, a quantity of ten amunams of paddy. Its present value is rupees one hundred. To this ten amunams of paddy of this value, adding five amunams of paddy, being profit at the rate of 50 per cent. per annum, the total quantity of principal and profit fifteen amunams of paddy, free of damage, chaff, and cheenatty, measuring with a marakal exactly holding seven peers, I shall deliver to the said Suppramaniapillai or to his legal heirs, &c., in one instalment within the month of June, 1901, next ensuing. at the threshing-floor of Natkaranvely, and defray the expenses of removing the same by cart to Vadankaraiturai, cause endorsement be made in this and redeem this deed. In default, adding the profit mentioned herein for the said term with further profit on the said principal quantity of ten amunams of paddy at the aforesaid rate of 50 per cent. per annum from the date of default till recovery, he may sue me at law for the value of the total quantity of principal and accrued profit paddy, calculating value at the rate paddy may be selling at Puliyantivu at the time of action, and recover the same from me and from all the property whatsoever belonging to me. Hereby renouncing the benefit of contesting that I did not measure and receive the said paddy I set my signature to this and grant this deed.

"(Signed) S. KALIKUTTY.
"(Signed) N. D. N. SINNETAMBY,
"Notary Public."

1908.
March 6.
MIDDLETON J.

This document is notarially executed, and is stamped as an agreement, of which the matter thereof does not exceed value Rs. 100, and not as a promissory note. The Tamil document A produced bears no stamp on it, but recites in the attestation clause that the duplicate bears a 25-cent stamp. It is I presume a copy of the notary's protocol.

It is perfectly clear first of all, as Bonser C.J. said of the instrument in the case of *Tissera v. Tissera*,[1] that this is not a promissory note within the definition in section 83 of the Bills of Exchange Act, 1882. Is it then a written promise, contract, bargain, or agreement, or written security falling within the description of instruments set for in section 7 of the Ordinance? It is an instrument promising to return with high interest paddy received in one instalment within a stated month of a stated year, and in default of doing so to submit to an action at law for the value of the stipulated amount of paddy, with further interest, all to be computed in money.

In the case reported in *2 N. L. R. 238* the document was to a certain extent a conventional mortgage, as well as what the Court held to be a bond conditioned for the payment of money. In the present case the document has no pretence to be a mortgage, conventional or otherwise, but it is conditioned for the payment of money and notarially executed. It is not a simple agreement to deliver up movables within a certain period, as in the case of *Kandaperumal v. Kandaperumal*,[2] although the document in that case appears to have been notarially executed.

As regards section 6 of Ordinance No. 22 of 1871, it seems to me to contemplate only such instruments as are usually embodied in the external formality and solemnity of a deed under English Law. In our system of legal procedure the nearest approach to a deed in point of solemnity is a notarially executed document. Bonser C.J. in *Tissera v. Tissera* said that in this Island a deed might be defined as a writing attested by a notary, and a bond as an acknowledgment of or promise to pay a debt in an instrument attested by a notary.

I think, therefore, that if a document purports to be stamped as an agreement executed notarially, and contains a condition for the payment of money on the non-fulfilment of its agreed terms, that it may well be deemed to be a bond within the meaning of section 6, on the principle laid down by Bonser C.J. and assented to by Lawrie J. in *Tissera v. Tissera*.

The reasoning of the Supreme Court in the case reported at page 297 of *Wendt's Reports* appears also to support the view I have taken. The instrument in the case of *Mohamadaly Marikar v. Assen Naina Maricar*[3] was not notarially executed, although in its terms it described itself as a bond.

[1] *(1896) 2 N. L. R. 238.*
[2] *(1892) 1 S. C. R. 142.*
[3] *(1890) 1 C. L. R. 40.*

In my opinion, therefore, the judgment of the Commissioner of Requests must be set aside, and the case sent back to him to enter judgment according to law.

This appeal will be allowed with costs.

Appeal allowed.