

(1899) 07 CAL CK 0024**Calcutta High Court****Case No:** Regular Appeal No. 171 of 1868

Nilmadhab Sing Das and Others

APPELLANT

Vs

Fatteh Chand Sahu

RESPONDENT

Date of Decision: July 26, 1899**Judgement**

Norman, J.

This was a suit to recover 5,500 rupees, with interest at 2 per cent. a month, from the 2nd of Aswin 1274 (September 1867). The facts established by evidence are that the defendants borrowed rupees 5,300 from the plaintiff, to secure which defendants Nilambar, Parmanand, and Bhiknath executed a bond containing an agreement that they would repay the principal and interest at 2 per cent. per month in the month of Sraban in the Fusli year 1274 (July 1868), and in the event of non-payment thereof would sell Mauza Bhowanipore and other properties to the plaintiff. The defendant denied the execution of this instrument of conditional sale before the Registrar, and consequently as the instrument could not be registered, the plaintiff sued to recover back the money with interest.

2. The Principal Sudder Ameen held that the instrument as a bye-bil-wafa, or deed of sale, was one which it was not necessary to register. In that view, we do not concur; so far as it was a mortgage or deed of conditional sale, it no doubt created in favour of the mortgagee an interest in the immoveable property to which it relates, and therefore u/s 17, clause 2, registration was compulsory.

3. But so far as it is a covenant or agreement for the repayment of the money lent on a particular day, it is not an instrument requiring registration, and therefore in such character and for such purposes it is in my opinion, admissible in evidence notwithstanding the provisions of section 49. The case of *Woodoy Chand Jana v. Nitye Mundal* 9 W.R. 111, and [Gopal Prasad Vs. Nandarani](#) are nearly in point. I must however express my dissent from the proposition that the instrument in the case last cited did not directly create a right in immoveable property, or as such require registration. As regards the appellants Nilambar, Parmanand and Bhiknath, the

appeal must be dismissed with costs.