
(1941) 03 AHC CK 0007
In the Allahabad High Court

L.H. Sugar Factory

APPELLANT

Vs

Moti

RESPONDENT

Date of Decision : 24-03-1941

Acts Referred:

Citation : AIR 1941 All 243

Hon'ble Judges : Iqbal Ahmad, Acting C.J.; Verma, J; Mulla, J; Dar, J; Bajpai, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Iqbal Ahmad, Ag. C.J.

1. This is a reference u/s 60, Stamp Act, (Act II of 1899) by the Small Cause Court Judge of Pilibhit and the questions formulated by the learned Judge in the reference are as follows:

(1) Whether the instrument dated 16th May 1936 is a "bond" as defined u/s 2(5), Stamp Act, chargeable with the duty provided for under Article 15, Schedule 1 of that Act or is it an agreement for or relating to the sale of goods or merchandise exclusively covered by exemption (a) of Article 5, Schedule 1?

(2) If it is a "bond" whether the duty chargeable is that provided for under Article 15, Schedule 1, Stamp Act, or that provided for under Schedule 5, U.P. Agriculturists' Relief Act, even though the instrument is not registered, it being admitted that the executant is an "agriculturist" within the meaning of the term u/s 2(1), U.P. Agriculturists' Relief Act?

2. The learned Judge felt doubt as to the amount of duty chargeable in respect of the instrument dated 16th May 1936 and, accordingly, he, in conformity with the provisions of Section 60(1), Stamp Act, drew up a statement of the case and made the present reference. In the course of the reference he expressed the opinion that the instrument in question is a bond as defined u/s 2(5), Stamp Act, and is chargeable with the duty provided for under Article 15, Schedule 1 of the

Act. He was further of the opinion that, as the instrument was not registered, Schedule 5, U.P. Agriculturists' Relief Act, was inapplicable. The reference was originally heard in part by a Bench of three Judges and, as there was difference of opinion among the Judges constituting the Bench, the case was ultimately referred to, and heard by, the present Bench consisting of five Judges.

3. While it is admitted on all hands that the instrument dated 10th May 1936 is so framed as to come within the description of more than one of the instruments specified in Schedule 1, Stamp Act, the question as to what articles of that Schedule are applicable to the instrument has been the subject of long debate and acute controversy. Further there is difference of opinion among the Judges constituting the present Bench about the true interpretation of Section 40, U.P. Agriculturists' Relief Act, and, lastly, there is unfortunately disagreement even about the interpretation of the instrument itself. The instrument is drawn up in Urdu language and an official translation of the same has been supplied to us. It runs as follows:

I, Moti...resident of...district Pilibhit do declare as under : I, the executant, by hypothecating for the year 1344F. the sugarcane fields of eight Kham bighas, bounded and specified as below and situate in Mauza Beri Khera, Pargana Pilibhit, district Pilibhit, which I had cultivated and produced, have taken, by promising to sell the said sugarcanes, (upar moaheda farokhtgi nai shalcar mazlcur), a sum of Rs. 35 in cash, as a peshgi (advance-money) on an interest payable at the rate of 2. pies per rupee per mensem from L.H. Sugar Factories Ltd., Pilibhit, through the Mufaslis Gane Office; and that for such sums as I will take in future I shall abide by the following terms:

(1) That, in accordance with the quota, assigned by the creditor, I, the executant, shall supply, from the time of the start up to the finish of the work in the karkhana, the whole and the part of the sugarcanes - at least to the extent of the estimate for September 1934, in English weight and according to the legal rate - of the hypothecated sugarcane field...at such weighing machine of the karkhana in Pilibhit as will be assigned by the creditor aforesaid.

(2) That if, any day, the delivery of sugarcanes be not taken at the karkhana, on account of its not working or any other reason, I shall not get the sugarcanes peeled out that day, nor shall I take them to the weighing machine, but it is conditioned that I, the executant, shall be informed of it a day before.

(3) That all such sugarcanes, specified above, as will be supplied by me, the executant shall be of pure and fine stuff

(4) That I, the executant, shall continue to take, from the said creditor, the duplicated sarkhats to certify delivery of such sugareanes as I will supply, and I shall be entitled to receive from him the price thereof according to the prescribed rate....

(5) That, whenever a necessity will dictate I, the executant, shall in addition to

the zar-i-peshgi aforesaid, continue to take under receipts, further sums from the said creditor, the aggregate amount whereof will come to Rs. 100 and all the sugarcane shall stand hypothecated for the entire mutaleba, aforesaid and the price of the sugarcane supplied will be allowed a set-off against the mutaleba zar-i-peshgi, and receipts, aforesaid, and the interests thereon, which under this contract, is payable by me up to the time of supply of the sugarcane; that if, after the mutaleba aforesaid, has been set-off, a surplus amount, payable to me by the said creditor on account of price of sugarcane, be found to have accumulated, I, the executant, shall, on demand, take it interest-free; and that I shall pay up the mutaleba, if any, found due by me to the said creditor when the accounts will be squared after the end of the work, in the karkhana, and in case of default I shall pay an interest thereon at the rate of 2 pies per rupee.

(6) That the quantity of the hypothecated sugarcane, which I have sold will be at least at par with the above-mentioned estimate in English maunds and should the sugarcane supplied be less than the contracted quantity, referred to above, I shall, for this breach of the contract, pay a compensation at the rate of one anna per maund for the unsupplied portion of the contracted quantity of the sugarcane which in fact will be far less than the damages of the creditor.

(7) That the hypothecated sugarcane, referred to above, do not in any way stand transferred on my behalf to any other place....

(8) That I, the executant, shall, after (enforcement of) this contract, no longer have any proprietary right of any kind in the hypothecated sugarcane, referred to above; that I shall however be responsible for getting the sugarcane cut down, and the steins, prescribed by the creditor, weighed and delivered so that the price thereof may be fixed in my presence, and if I fail to do so, the said creditor shall take delivery of the hypothecated sugarcane, sold to him, after getting them cut down and weighed by his servants....

(9) That I have obtained a copy of this contract from the creditor, aforesaid, and that I have heard and understood the contents thereof.

Boundaries of the hypothecated sugarcane field:

Land - Bight bighas. Bast - Totey West - Das North - Bilari South - Khem Raj. Written on 16th May 1936, at Pilibhit.

4. The instrument is signed by Moti and is attested by witnesses. It has however not been registered. In considering the nature and scope of the instrument the circumstances which led to its execution must, for obvious reasons, be kept in view. The L.H. Sugar Factories, Ltd. hereinafter referred to as the promisee, requires large supply of cane for the manufacture of sugar. The supply is mostly made by agriculturists to whom in order to ensure regular supply of cane during the crushing season, money is advanced by the promisee long before the cane crop is ripe for delivery. The exigencies of the situation, therefore, primarily demand an assured supply of cane to the promisee, and the surest method by

which this object can be achieved is to enter into agreement with agriculturists to sell their growing cane crop to the promisee. It is manifest, therefore, that the dominant intention underlying the execution of the instrument in question was to bind Moti by an agreement to sell sugarcane grown by him in the fields specified in the instrument to the promisee, and not to dispose of the same otherwise. That this is so is clear from the terms of the instrument. In the opening portion of the instrument, there is a recital about the promise to sell and in para. 6 the executant clearly mentions that he has "sold" the sugarcane and lastly in para. 8 it is stated that "the executant, shall, after (enforcement of) this contract, no longer have any proprietary right of any kind in the hypothecated sugaroanes." These stipulations contained in the instrument, coupled with the terms specified in paras. 1, 2, 3, 4 and 5 about the supply of cane, do, in my judgment, clearly evidence an agreement for the sale of cane. The instrument, however, does not stop short at that. It also contains a recital about the payment of Rs. 35 as advance money to Moti and para. 5 contains stipulations that entitle him "to take, under receipts." "In addition to the zar-i-peshgi aforesaid," "further sums from the same creditor the aggregate amount whereof will come to Rs. 100" and the entire cane crop stands hypothecated for the entire amount so advanced. It is not disputed that these recitals and covenants in the instrument bring it within the purview of Article 41 of Schedule 1, Stamp Act. The relevant portion of the article runs as follows:

Mortgage of a crop, including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the date of the mortgage.

5. There is yet another obligation cast by the instrument on Moti by the latter portion of para. 5, and that is to pay to the promisee such sum as may be found due from Moti after setting off the price of the cane supplied as against the total amount advanced by the promisee. It would be noted that this obligation is independent of the mortgage of the crop as, according to the instrument, the entire mortgaged crop was to be delivered to the promisee and the balance of the unliquidated advance money was to be payable by Moti with respect to which no crop was hypothecated. The obligation to pay the outstanding advance money, in my judgment, renders the instrument a bond as defined by Section 2(5)(b), Stamp Act, which provides that

"bond" includes any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another.

6. Further there is a clear stipulation in the instrument which obliges Moti to supply the sugarcane crop to the promisee. This stipulation, to my mind, is no more than a mere subsidiary covenant to the agreement to sell the crop. The sale of crop necessarily carries with it an implied obligation to deliver the crop sold. The covenant contained in the instrument as to the supply of the cane crop was, therefore, in my opinion, not extraneous to the agreement of sale, but a mere collateral stipulation subsidiary to the agreement to sell the crop. But, as

already stated, the instrument is attested by witnesses and it is this attestation that brings the instrument also within the purview of a "bond" as defined by Section 2(s)(c), Stamp Act, which provides:

"bond" includes - any instrument so attested, whereby a person obliges, himself to, deliver grain or other agricultural produce to another.

7. Agreements for the sale of goods or merchandise contemplated by Article 5 of Schedule 1 do act require attestation and, therefore, such agreements, if unattested, would remain mere agreements, even though there is a covenant as to the delivery of the goods agreed to be sold. But the moment such an agreement is attested it becomes a bond. This view is in accord with the Full Bench decision of the Madras High Court in Reference u/s 46, Stamp Act ('85) 8 Mad. 87 (FB) It was held in that case that a promissory note not payable to bearer or order, if attested, becomes a bond. To the same effect is the Full Bench decision of the Bombay High Court in In re Ralli Bros ('06) 8 Bom.L.R. 234. It was laid down in that case that an agreement for sale of cotton between two merchants, when attested by a witness, becomes a bond within the meaning of the Stamp Act, 1899.

8. For similar reasons that portion of the Instrument of which mortgage of cane crop was created also falls within the definition of a "bond," It may be assumed that a promise to repay the mortgage debt is an integral and indispensable part of a "mortgage of a crop" and the mere inclusion of such a promise would not therefore convert an instrument embodying the mortgage of a crop into a bond. The mortgage of a crop referred to in Article 41 does not however require attestation but the instrument in the case before us is, as already stated, attested by witnesses. It is this attestation that brings the instrument also within the definition of a "bond" : vide the Full Bench decision in In the matter of Gajraj Singh ('87) 9 All. 585.

9. The considerations noticed above lead me to the conclusion that the instrument in question is so framed as to come within three of the descriptions in Schedule 1. It is firstly and primarily an agreement for the sale of goods within the meaning of exemption (a) contained in Article 5. It also embodies the transaction of mortgage of a crop within the meaning of Article 41 and lastly it is a bond and thus falls within Article 15 of Schedule 1 to the Stamp Act. The instrument, so far as it evidences an agreement for the sale of the cane crop, does, in my judgment, fall within exemption (a) of Article 5 which exempts from stamp duty : "Agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively...."

10. It was suggested that this exemption applies only to instruments that are bare and simple agreements for the sale of goods or merchandise and has no application to instruments which are, so to say, of a double character in so far that they embody, over and above the agreement for the sale of goods, some other transaction also. The argument is that, as the instrument in question

embodies also a transaction of the mortgage of a crop over and above the agreement for the sale of that crop, the exemption has no application. In my judgment the argument is without force. If the Legislature intended to confine the operation of the exemption only to agreements simpliciter for the sale of goods or merchandise the proper place for the word "exclusively" would have been before or after the phrase "agreement or memorandum of agreement" and not after the words "the sale of goods or merchandise." Further the phrase "agreement or memorandum of agreement" used in the opening portion of the "exemptions" in Article 5 control the three Clauses (a), (b) and (c) specified in the "exemptions." If the argument is well founded the word "exclusively" would have been used not only in one of those clauses, viz., in Clause (a), but would have been used in conjunction with the opening words of the "exemptions" quoted above. To give effect to the argument would be to hold that the word "exclusively" controls the opening words "agreement or memorandum of agreement" and thus governs all the three clauses of the exemptions and this, in my judgment, is not permissible having regard to the phraseology of the "exemptions." The argument further leads to an obvious anomaly that is illustrated by the following example. Take a case in which a person executes an agreement for the sale of crop and by a separate instrument of even date mortgages the same crop. The former instrument will, in that case, admittedly fall within the "exemptions" and he will have to pay stamp duty only on the latter instrument. But if he joins the two transactions in one and the same instrument he will have, according to the argument, to pay the stamp duty provided for not only by Article 41, but also by Article 5(c) of Schedule 1. This obviously could not have been intended by the Legislature.

11. To my mind an agreement for the sale of goods or merchandise is exempt from stamp duty even though the instrument embodying the agreement evidences certain other transactions also. In other words, the word "exclusively" governs the phrase "the sale of goods or merchandise." In this view of the matter the instrument in question, so far as it discloses an agreement for the sale of cane crop, is exempt from stamp duty. Before leaving this part of the case I must notice the decision of the Madras High Court in *Kyd v. Mahomed* ('92) 15 Mad. 150, to which a reference was made in the course of arguments. It was held in that case that

an agreement for the sale of goods does not require a stamp under the Stamp Act, although it contains provisions as to the warehousing and insurance of the goods previous to delivery.

12. The reason for the decision was that the stipulations relating to the payment of go-down rent and fire insurance as also those relating to reference to arbitration contained in the instrument embodying the agreement of sale were "only the collateral and subsidiary incidents relating to the sale of the goods." In the course of their judgment the learned Judges observed that the test which should be applied is to see whether the document evidences only a transaction of

sale or a sale and some other independent transaction, and if the former the number of subsidiary stipulations it may contain cannot alter the nature of the transaction.

13. Reliance was placed on these observations in support of the suggestion and argument noticed above. But the obvious answer is that the question that forms the subject of consideration in the case before us was not the question for decision in the Madras case and at best the observations are obiter dicta. In that case the instrument under consideration embodied an agreement for the sale of goods and contained certain covenants that were held to be collateral and subsidiary incidents relating to the sale of the goods. No transaction independent of the agreement for the sale of goods was evidenced by that instrument and therefore the question that calls for decision in the present case did not arise in that case. In the view that I take, the instrument under consideration is not chargeable with stamp duty so far as it evidences an agreement for the sale of cane crop. The question, however, remains as to what stamp duty is chargeable on the instrument so far as it constitutes the "mortgage of a crop" and a "bond." It is argued by the learned Advocate-General that, in view of the provisions of Section 6, Stamp Act, the instrument is, chargeable with the stamp duty provided for (by Article 13 of Schedule 1 which prescribes the stamp duty payable on "bond." Section 6 enacts that subject to the provisions of Section 5 an instrument so framed as to come within two or more of the descriptions in Schedule 1 shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties.

14. It is contended that as the stamp duty prescribed by Article 15 is in excess of the stamp duty provided by Article 41, which deals with the "mortgage of a crop," the instrument was chargeable with the stamp duty specified in Article 15. Mr. Pathak has contested the position taken by the Advocate-General, and has put his case in the alternative. In the first place he argues that Article 15 is a residuary article and applies only when the instrument in question is not covered by any other article in Schedule 1. He contends that, as the instrument under consideration falls under Article 41, Article 15 can have no application, and, as such, the case is not governed by Section 6. In the alternative he maintains that, even if Article 15 is not a residuary article and the instrument comes within the purview of Section 6, the instrument, is sufficiently stamped in view of the provisions of Section 40, U.P. Agriculturists' Relief Act, (27 of 1934) read with Schedule 5 of that Act.

15. As I am in agreement with the latter argument of Mr. Pathak, I am relieved from the necessity of deciding the question whether or not the argument that Article 15 is a residuary article is well founded. After all, on a reference of the present description, the broad question that falls to be decided is whether or not the instrument is sufficiently stamped and this Court is not called upon to specifically answer the questions formulated in the reference. That this is as is clear from Section 60(2), Stamp Act, which enjoins the Court to "deal with the

ease." Accepting as I do the contention based on Section 40, Agriculturists' Relief Act, it is wholly unnecessary to examine the validity of the other ground assigned in support of the contention that the proper stamp duty has been paid on the instrument. Section 40, Agriculturists' Relief Act, runs as follows:

40. (1) Notwithstanding anything contained in the Stamp Act, 2 of 1899, and the rules made under the Registration Act, 16 of 1908, the stamp-duty and the registration and the copying fees on bonds of value or amount not exceeding Rs. 3000, executed by an agriculturist and registered under Registration Act shall be as laid down in Schedule 5.

(2) If a bond is executed on a form printed under the authority of the Local Government, no copying fee shall be leviable for making a copy or a note of the bond in the books prescribed under the Registration Act, 16 of 1908.

16. In Schedule 5 the "scale mentioned in Section 40 is specified by the following table:

Amount or value of the bond Rs.	Stamp as.	Resistra- as.	Copying duty	tion fee fee	Rs. as. As.
Where the amount or value secured does not exceed Rs. 50	0-1	0-1	3	Where it exceeds Rs. 50 but does not exceed Rs. 100	0-2
Rs. 100	0-2	0-2	3	" Rs. 200	0-4
" Rs. 200	0-4	0-4	0	" Rs. 300	0-6
" Rs. 300	0-6	0-6	6	" Rs. 400	0-8
" Rs. 400	0-8	0-8	8	" Rs. 500	0-12
" Rs. 500	0-12	0-12	10	" Rs. 600	1-10
" Rs. 600	1-10	2-4	12	" Rs. 700	2-4
" Rs. 700	2-4	2-4	12	" Rs. 800	2-6
" Rs. 800	2-6	2-4	12	" Rs. 900	2-12
" Rs. 900	2-12	2-4	12	" Rs. 1000	3-2
For every Rs. 250 or part of Rs. 250 above Rs. 1000	2-4	2-4	12		
and up to Rs. 3000	1-0	0-4	Nil		

17. That the stamp duty prescribed by Schedule 5 with respect to bonds falling within the purview of Section 40 is less than and is in substitution for the stamp duty prescribed by Article 15, Stamp Act, is not disputed. Much controversy has, however, hovered over the question whether the concession in the stamp duty allowed by Schedule 5 can be availed of by an agriculturist only if he gets the bond registered or he is entitled to that concession even though the bond is not registered. It is argued on the one hand that Section 40 is applicable only if the bond is also registered and in support of this contention reliance has been placed on the words "executed by an agriculturist and registered under the Registration Act" used in that section. It is pointed out that the use of the word "and" in the above quotation demonstrates that the essential condition for the applicability of Schedule 5 is that the document should also be registered. The argument on the other hand is that the word "and" has been used in a distributive sense and that the lesser stamp duty provided by Schedule 5 is payable even though the bond is not registered. I have no hesitation in accepting the latter argument. There is abundant authority for the view that in order to give effect to the real intention of the Legislature it is permissible to read "and" as "or". There are the following observations in Maxwell on the Interpretation of Statutes, Edn. 7, at pages 205

and 206:

To carry out the intention of the Legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other. The 43 Eliz. c. 3, for instance, in speaking of property to be employed for the maintenance of "sick and maimed soldiers" referred to soldiers who were either the one "or" the other and not only to those who were both....

The converse change was made in a Turnpike Act which imposed one toll on every carriage drawn by four horses and another on every horse, laden or not laden, but not drawing and provided that not more than one toll should be demanded for repassing on the same day "with the same horses and carriages." It was held that the real intention of the Legislature required that this "and" should be read as "or," and that a carriage repassing with different horses was not liable to a second toll. The toll was imposed on the carriage and it was immaterial whether it was drawn by the same or different horses.

18. Similarly it is pointed out in Stroud's Judicial Dictionary, 2nd Edn., p. 82, that:

"And" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of "or." Sometimes however even in such a connexion, it is by force of a context, read as "or." Thus, where a lessee underlet, with a proviso, on breach of covenant, enabling him and his lessor to re-enter; held that he or his lessor might re-enter on breach, *Doe de Bedford v. White* (1828) 4 Bing 276.... "And" may be relative as well as copulative.

19. It is however to be noted in this connexion that it is the duty of a Court of law to primarily adhere to the strict literal interpretation of the words used, and the substitution of conjunctions should not be made without sufficient reason. But if such adherence is destructive of the object of the enactment and leads to anomalies and absurdities, it is fair to assume that the Legislature did not use the words in that sense and in such a case the conversion of "and" into the disjunctive "or" is permissible. In other words, when the phraseology of an enactment is capable of one and only one interpretation it is not open to the Courts to give a go by to that interpretation simply with a view to carry out the supposed intention of the Legislature. But if the phraseology used is capable of two interpretations that interpretation which is consistent with the object of the enactment is to be preferred to the interpretation that would nullify that object. As observed by Walsh J. in the Full Bench decision in *Jwala Prasad Vs. Sheikh Chuttan and Another*, :

Where a section...is capable of two renderings or is said to mean less or more, than it says, it is a maxim of interpretation that one must look at the scope and object of the enactment. For this purpose it is useful to recall the history.

20. Now, by Sub-section (1) of Section 39 the preparation of a document for

every loan taken by an agriculturist and the supply of a copy thereof to the debtor has been made obligatory. Further Sub-section (2) of that section enjoins that an entry should

be made in every such document specifying the date by which repayment must be made in order to earn the benefit of Section 29 and the rate of interest which shall prevail if repayment is made by such date.

21. Then Sub-section (1) of the section provides that no such written document shall require a stamp duty higher than that which would have been payable in respect thereof had it not contained the details mentioned in Sub-sections (1) and (2), and no copy supplied to the debtor as required by Sub-section (1) shall require any stamp, duty.

22. It would thus appear that Section 39 makes it impossible for an agriculturist to take loan without the execution of a document. To this extent the section imposes a disability on an agriculturist under which he did not labour before the passing of the Act. As I read Section 40, it seems to me that that section was enacted with the object of compensating an agriculturist for the obligation imposed on him by Sub-section (1) of Section 39. While on the one hand the Legislature made it Imperative that the loan taken by an agriculturist should be evidenced by a written instrument, it, on the other hand, gave relief to the agriculturist in the matter of stamp duty. It has already been stated that the stamp duty prescribed by col. 2 of Schedule 5 is less than the duty prescribed by Article 15, Stamp Act.

23. The question then arises whether the Legislature intended to confine the concession in stamp duty only to cases where the bond executed by an agriculturist was also registered. I find it impossible to answer this question in the affirmative. It is true that in Section 40 mention is made of "the stamp duty and the registration and copying fees."

But Sub-section (2) of Section 40 makes it clear that if a bond is executed on a form printed under the authority of the Local Government, no copying fee shall be leviable for making a copy....

24. In other words, by virtue of the provisions of Sub-section (2) of Section 40 there is no escape from the conclusion that the Legislature did not intend that the last three columns of Schedule 5 that prescribe the duty and fees can apply either as a whole or not at all. If a bond is executed on the form printed by the Local Government only the stamp duty and registration fee prescribed by cols. 2 and 3 of Schedule 5 will be leviable and not the copying fee. The last three columns of Schedule 5 are therefore mutually exclusive of each other. If a document is executed on the form printed under the authority of the Local Government no copying fee is leviable even though the bond is registered and in such a case only cols. 2 and 3 that prescribe the stamp duty and registration fee will be applicable. That being so I fail to appreciate, why if a bond is not

Article 15 so far as bonds between Rs. 50 and Rs. 500 are concerned. Again the total of the duty and fees laid down by Schedule 5 is in excess of the stamp duty prescribed by Article 15 so far as bonds in excess of Rs. 500 are concerned. In order to sail clear of these inconsistencies which cannot be imputed to the Legislature the only course open is to read the word "and" used in Section 40 as "or" and for this there is ample authority to which reference has been made above. The stamp duty, registration fee and copying fee prescribed by Schedule 5 is less than the stamp duty provided by Article 15 and is also less than the registration and copying fee prescribed by the rules made under the Registration Act. It therefore appears that the Legislature intended to give relief to agriculturist debtors in the matter of stamp duty as also in the matter of registration and copying fees. The use of the word "and" in the sentence "executed by an agriculturist and registered under the Registration Act" in Section 40 was rendered necessary in view of the fact that a document cannot be registered unless it is executed, if the word "or" had been used the said sentence would have run thus : "Executed by an agriculturist or registered under the Registration Act," and in such a case the sentence would have been open to the obvious objection that you cannot get a document registered without executing the same. For the reasons given above I hold that Section 40 and Schedule 5 apply to bonds executed by agriculturists even though they are not registered.

29. It was also contended by the learned Advocate-General that Section 40 is applicable only if the instrument in question is a bond pure and simple and that that section has no application to instruments that embody some transaction other than that of a "bond." He therefore urged that Section 40 has no application to the instrument under consideration. I am unable to agree with this contention. By Section 40 and Schedule 5, Agriculturists' Relief Act, only Article 15, Stamp Act, stands amended, but the rest of the Stamp Act retains its binding force. Sections 5 and 6, Stamp Act, therefore remain operative. Section 6 has already been quoted. It is provided by Section 5 that

any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

30. If an instrument executed by an agriculturist evidences a transaction of loan and also relates to some other "distinct matter" it will be governed by Section 5. It will then be chargeable with the stamp duty prescribed by Schedule 5, Agriculturists' Relief Act, so far as it constitutes a "bond" and will be chargeable with stamp duty prescribed by the Stamp Act with reference to the other distinct matter. On the other hand, if the instrument is so framed as to come within the description of a bond as well as within the description of Some other instrument specified in Schedule 1, Stamp Act, it will be governed by Section 6 and in such a case will be chargeable by the highest duty leviable. I have already given my reasons for holding that the instrument under consideration embodies an

agreement for the sale of goods within the meaning of exemption (a) in Article 5 and that it also embodies the transaction of mortgage of a crop within the meaning of Article 41 and lastly it is a bond falling within Article 15 of Schedule 1 to the Stamp Act. So far as it incorporates an agreement for the sale of goods it is exempt from stamp duty. So far as it is a bond it is governed by Schedule 5, Agriculturists' Relief Act, and so far as it evidences the mortgage of a crop it is governed by Article 41, Stamp Act.

31. I agree with my brothers Bajpai and Dar in holding that the amount secured by the instrument in question is only Rs. 100 and not Rs. 135. That being so the stamp duty payable under Article 41, Stamp Act, is 2 annas and the same is the stamp duty payable by Schedule 5 so far as the instrument constitutes a bond. It is clear from the provisions of Section 6 that if an instrument falls under two or more of the descriptions in Schedule 1, Stamp Act, and the duties chargeable thereunder are different the instrument will be chargeable only with the highest of such duties. This provision necessarily leads to the conclusion that if an instrument is so framed as to come within two or more of the descriptions in Schedule 1 and the duties chargeable thereunder are the same, the instrument shall be chargeable only with one of such duties. It follows that the stamp duty payable on the instrument in question was the one provided for by Article 41 or by Schedule 5. Such duty was paid and accordingly the instrument is sufficiently stamped. This is my answer to the reference.

Bajpai J.

32. This is a reference by the Small Cause Court Judge of Pilibhit u/s 60, Stamp Act, 1899. The matter has come before a Bench of five Judges in view of the general importance of the questions referred - importance to the public of the United Provinces and to the Government. One Moti Khatik executed a document in favour of L.H. Sugar Factory Ltd., Pilibhit, on 16th May 1936 and this document was put in evidence in the Court of the Small Cause Court Judge where the clerk reported that the duty paid on the instrument was deficient by 2 annas and, as such, the document should not be admitted in evidence without payment of Rs. 5 as penalty and annas two as deficient stamp duty. The learned Small Cause Court Judge after preparing a statement of the case has formulated two questions of law for our determination. They are:

(1) Whether the instrument dated 16th May 1936 is a "bond" as defined u/s 2 (5), Stamp Act, chargeable with the duty provided for under Article 15, Schedule 1 of that Act or is it an agreement for or relating to sale of goods or merchandise exclusively covered by exemption (a) of Article 5 of Schedule 1?

(2) If it is a "bond" whether the duty chargeable is that provided for under Article 15 of Schedule 1, Stamp Act, or that provided for under Schedule 5, U.P. Agriculturists' Relief Act, even though the instrument is not registered, it being admitted that the executant is an "agriculturist" within the meaning of the terra u/s 2(1), U.P. Agriculturists' Relief Act?

33. The learned Judge himself is of the opinion that the document is a bond as defined in Section 2(5), Stamp Act, and is chargeable with the duty provided for under Article 15 of Schedule 1, Stamp Act. It is not an instrument which should be charged with duty provided for under Schedule 5, U.P. Agriculturists' Relief Act, as it has not been registered. It is not necessary for me to state at length all the provisions of the document. Moti has a sugarcane field of 8 kham bighas and he has entered into an agreement to sell the entire produce of the field to L.H. Sugar Factory Ltd., Pilibhit. The price is to be regulated by certain Government rate. An advance of Rs. 35 was taken before the execution of the document and it was agreed that fresh advances will also be taken from time to time but the aggregate amount will not exceed Rs. 100. As security the entire sugarcane crop of the field was mortgaged with the Sugar Factory. There are certain other conditions about the quality of the sugar and future accounting.

34. The interpretation of this document is the first question that calls for determination, and one of the disputed points was whether the document was for Rs. 35 or for Rs. 100 or for Rs. 135. It may be said at once that the document was not for Rs. 35 and although it may be possible to hold that the document was for Rs. 135 the better view is that the document was for Rs. 100 only. The instrument is not artistically drawn up, but it seems that the Sugar Factory agreed before the final accounting to advance to Moti an aggregate sum of Rs. 100 including Rs. 35 taken before the execution of the document. The next question is regarding the category of the instrument. It is obvious to my mind that the instrument does not evidence a single transaction but is a composite document containing two distinct transactions. On the one hand it is an agreement to sell the sugarcane crop and on the other hand it is a mortgage of the same crop. The further question then arises whether it is a bond also. If the instrument evidences two transactions, Section 5, Stamp Act, comes into play, it says:

Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

35. Some reference in the course of argument was made to Section 6 also but that is hardly applicable because it relates to an instrument so framed as to come within two or more of the descriptions in Schedule 1 and in that case if the duties chargeable thereunder are different the instrument will be chargeable with the highest of such duties. To my mind the instrument in question relates to "several distinct matters" and therefore it is chargeable with the aggregate amount of the duties with which separate instruments would be chargeable under the Act. I have held above that the instrument evidences two transactions, namely (1) a mortgage of sugarcane crops and as such, is chargeable under Article 41, Schedule 1 of the same Act with two annas, the sum secured not exceeding Sections 100 and (2) an agreement and is therefore also chargeable

under Article 5 of the Schedule. It is contended on behalf of the Crown that the instrument would be chargeable under Article 5(c) and would have to pay a duty of eight annas. The contention on behalf of the opposite party is that it being an agreement relating to the sale of goods or merchandise exclusively is exempt from stamp duty. The position taken by the Factory is that under Article 41 it is payable with a stamp duty of two annas and under the exemption (a) to Article 5 of the Schedule it is liable to pay a duty of zero and u/s 5 of the Stamp Act the aggregate amount of the duties, if the two instruments had been separate, would have been two annas plus zero, that is two annas, and the instrument is thus sufficiently stamped.

36. The further contention on behalf of the Crown is that the instrument is a bond and, as such, ought to pay the duty provided by Article 15 of the Schedule, and Section 6 of the Stamp Act comes into play because the instrument is so framed as to come within two or more descriptions in Schedule 1 and the duties chargeable thereunder are different and therefore the instrument shall be chargeable with the highest of such duties which will be eight annas as the instrument does not exceed Rs. 100 (if my view about the value of the instrument is correct). The contention, however, on behalf of the factory is that Article 15 is of a residuary character intended for bonds which cannot be assigned to any other article of the Stamp Act and are not provided for by the Court-fees Act. On both these controversial matters there is authority either way, but as a member of this Bench I am not bound by the authority of any stronger Bench and I do not propose to discuss them but shall decide the matter as if it were a case of first impression. The question that faces one at the threshold of the enquiry is whether exemption (a) to Article 5 applies to this case or not. This is a question apart from the applicability of Article 15. The exemption runs as follows:

37. "Agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively." The word "exclusively" occurs nearest to the words "goods or merchandise" but "exclusively" is an adverb and cannot modify a noun. It must modify the phrase "relating to the sale of goods or merchandise", but it does not follow therefrom that if such an agreement is contained in an instrument which contains another transaction also the exemption will be forfeited. There is no warrant for substituting the word "document" or "instrument" for the word "agreement" nor is there any warrant for transposing the word "exclusively" and putting it after "agreement or memorandum of agreement." The frame or the form of the document has got to be taken into consideration when adjudging the stamp duty, but the frame or the form should not be given an undue importance so as to defeat the substance, and I can see nothing in the use of the word "exclusively" to force me to the conclusion that the exemption will apply only if the instrument contains nothing but an agreement or memorandum of agreement for or relating to the sale of goods or merchandise. As I said before the instrument contains two distinct matters, namely the mortgage of the crop and the agreement to sell the crop.

"Goods" have been defined in Section 2 (7), Sale of Goods Act, and they include "growing crops." Section 6(3), Sale of Goods Act, says:

Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

38. The sale of the sugarcane crop therefore is an agreement relating to sale of goods within the meaning of the exemption clause appertaining to Article 5, Sen. I, Stamp Act. In my view, the exemption applies and the duty payable on the instrument is under Article 41 only as on a "mortgage of crops" and no duty is payable on the "agreement to the sale of goods." This leads me to the consideration of the question ? whether the instrument is a bond. "Bond" has been defined in Section 2(5), Stamp Act, as including:

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be; (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another and (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

39. It is obvious that the above definition is not exhaustive because what is contained in Clauses (a), (b) and (c) is included in the definition of "bond" which might include other things as well, neither in the Stamp Act nor in the Limitation Act is there an exhaustive and complete definition of the term "bond." I might have said before but I say so now that the instrument in question before us is attested by three witnesses, and by it Moti obliges himself to pay money to the factory and he further obliges himself to deliver agricultural produce to the factory, but the obligation to pay money is incidental and ancillary to the mortgage of the crop and the obligation to deliver agricultural produce to the factory is incidental and ancillary to the agreement relating to the sale of crop. Clause (a) has obviously no application to the circumstances of the present case. It is said on behalf of the Crown that Clauses (b) and (c) apply and the instrument therefore is a bond and Article 15 applies. Article 15 runs as follows : Bond (as defined by Section 2 (5)) not being a Debenture (No. 27) and not being otherwise provided for by this Act, or by the Court fees Act, 1870, (then follows the duties chargeable with relation to the amount secured and then occur the words) See Administration Bond (No. 2), Bottomry Bond (No. 16), Customs Bond (No. 26), Indemnity Bond (No. 34), Respondentia Bond (No. 56), Security Bond (No. 57).

40. I have held before that the amount secured does not exceed Rs. 100 and the duty would be eight annas if Article 15 were applicable; but to my mind Article 15 would be applicable only if no other article is applicable. The mortgage of a crop which is provided for in Article 41 would cover one transaction of the instrument, but it is said that the mortgage of a crop need not be attested and as the instrument in question is attested it becomes a bond, i.e. (b) of Section 2 (5)

being applicable inasmuch as the executant obliges himself to pay money to another. It is nowhere provided in Article 41 that it will be applicable only if the instrument is unattested. It is further said that an agreement to sell goods might be exempt only if it is unattested, but in the present case Clause (c), of Section 2(5) is applicable inasmuch as the executant obliges himself to deliver agricultural produce to another, but once again it is nowhere provided in the exemption clause to Article 5 that it would be applicable only if the document is unattested. Exemption in the case of an unattested instrument is not unknown. Exemption to Article 6 is confined to instrument of pawn or pledge of goods if unattested and there would have been nothing easier than to say in the exemption to Article 5 that it will apply only in the case of agreement if unattested. A similar provision could have been inserted in Article 41 and it would have been quite easy to say that the mortgage of a crop would be covered by Article 41 only if the instrument was unattested. The probabilities are that instruments evidencing the mortgage of a crop or evidencing an agreement to sell goods would be ordinarily attested for the sake of security. Mere attestation therefore does not, to my mind, change the situation. I have already said that every mortgage of a crop must contain a stipulation to pay back the money advanced and the agreement to sell must contain the stipulation to deliver the agricultural produce and these two circumstances will not change the category of the instrument.

41. Article 15 is a residuary article and it does not follow that the article would apply in all cases excepting in the case of debenture, administration bond, bottomry bond, customs bond, indemnity bond, respondentia bond and security bond. When the Act at the end of Article 15 says, "see administration bond, etc., etc." it does not mean that these are the only bonds (along with debentures) which would not come within Article 15 and everything else which might come under the definition of bond as mentioned in Section 2(5) will come within Article 15. The word "see" followed by certain kinds of instruments and the words "see also" followed by certain kinds of instruments occur in a number of articles, for instance Articles 17, 19, 27, 28 and so on. The words "see" and "see also" to my mind indicate only cross-references and suggest so far as Article 15 is concerned that in connexion with certain kinds of bonds one has to look to certain other articles. The "bonds" mentioned after the word "see" are not exhaustive of the expression "not being otherwise provided for by this Act,"

42. My view therefore is that the instrument in question is sufficiently stamped even if we were to consider the provisions of the Stamp Act alone and in this view of the matter it is not necessary for the person who has produced the document in Court to seek any assistance from Sections 39 and 40, U.P. Agriculturists' Relief Act (Local Act 27 of 1934) because in my view the document in question is not a bond and Sections 39 and 40 deal with bonds. The second question as formulated by the learned Small Cause Court Judge however requires an answer for such a question might arise in the case of loans taken by agriculturists. Section 40 runs as follows:

40. (1) Notwithstanding anything contained in the Stamp Act, 1899, and the rules made under the Registration Act, 1908, the stamp duty and the registration and copying fees on bonds of value or amount not exceeding Rs. 3000, executed by an agriculturist and registered under the Registration Act, shall be as laid down in Schedule 5.

(2) If a bond is executed on a form printed under the authority of the Local Government, no copying fee shall be leviable for making a copy or a note of the bond in the books prescribed under the Registration Act, 1908.

43. Schedule 5 contains the scales mentioned in Section 40 and stamp duty, registration fee and copying fee are mentioned in three different columns as against bonds of particular valuation. u/s 39 every loan given after the date on which the U.P. Agriculturists' Relief Act comes into force shall be evidenced by a written document, but it is not provided that the document must also be registered. If however the document is registered, the scale of stamp duty, registration fee and copying fee is mentioned in Schedule Section Did the Legislature intend to make a concession in the case of stamp duty when the document was registered or did it make a concession in stamp duty even when the document was unregistered? It is dangerous to speculate as to the intention of the Legislature and although it may be permissible sometimes in order to obviate repugnancy to look into the intention of the Legislature, ordinary Courts ought to give effect to the clear words of the statute. It may be that the Legislature intended to provide for a lesser stamp duty and registration fee only if the document was registered or it may be that it intended to provide for a lesser stamp duty even if the document was only stamped and not registered. It is ever so difficult to gauge the intention in a matter like this. The object of the U.P. Agriculturists' Relief Act was undoubtedly to protect certain agriculturists against the oppression of money-lenders some of whom are proverbially unscrupulous and there can be no doubt that a written document evidencing the loan would afford protection to agriculturists and a registered document might afford still greater protection and the benefit of Schedule 5 might have been intended to be given only in the case of written and registered documents. I decline to speculate into this matter any further and propose to answer question 2 of the reference on the clear language of Section 40 where the words are that

the stamp duty and the registration and copying fees on bonds of value or amount not exceeding rupees three thousand executed by an agriculturist; and registered under the Registration Act shall be as laid down in Schedule 5.

44. The plain meaning of these words is that the benefit of the schedule could be obtained only if the document was executed and registered under the Registration Act and the benefit of lesser stamp duty could not be obtained if the document was only executed by an agriculturist and not registered. It is permissible in statutes to read "or" for "and" under certain circumstances, but I do not think that in the present case we can do this violence to the language. Section 39 provides for a written document and Clause (4) says that

notwithstanding anything in the Stamp Act, 1899, no such written document as is referred to in Sub-section (1) shall require a stamp duty higher than that which would have been payable in respect thereof had it not contained the details mentioned in Sub-sections (1) and (2),

and one would have expected that if the stamp duty in the case of even unregistered documents was to have been lesser than the one mentioned in the Stamp Act a provision to that effect would have been incorporated either in Clause (4) or by the addition of another clause to Section 39. That was the appropriate place where the provision, such as is contended on behalf of the subject, should have occurred; instead we find a composite provision contained in Section 40 and that can apply only if the document is executed and registered. For the reasons given above, in my view, the instrument is sufficiently stamped and this is my answer to the reference.

Verma J.

45. This is a reference u/s 60, Stamp Act (2 of 1899) by the Court of Small Causes at Pilibhit which, having felt doubt as to the amount of stamp duty to be paid in respect of an instrument produced by the plaintiff in a suit before it, has drawn up a statement of the case and has submitted certain questions for the decision of this Court. It appears that there is a sugar factory at Pilibhit known as L.H. Sugar Factory Ltd. For the purposes of its business, it needs sugarcane and, in order to arrange for its supply, it enters into contracts with the cultivators of sugarcane. Moti, the defendant in the suit out of which this reference has arisen, was such a cultivator in village Beri Khera, Pargana and district Pilibhit, in the year 1936. On 16th May in that year Moti executed an instrument in favour of L.H. Sugar Factory Ltd. It is in respect of this instrument that the amount of the proper stamp duty has to be determined. It is necessary to reproduce the material portions of this instrument. It has been translated in the office of this Court and the extracts given below are taken from that translation:

I, the executant, by hypothecating, for the year 1344F., the sugarcane fields specified below.... which I have cultivated and produced have taken by promising to sell the said sugarcanes, a sum of Rs. 35 in cash, as a peshgi (advance-money) on an interest payable at the rate of.. and for such sums as I will take in future, I shall abide by the following terms : (1) that . I . shall supply, from the time of the start up to the finish of the work in the Karkhana, the whole and the part of the sugarcanes. .. (2)...(3) ... (4) that I. .. shall be entitled to receive price thereof (the sugarcane supplied) according to the prescribed rate (5) that, whenever necessity will dictate, I, the executant, shall, in addition to the zare peshgi (advance-money) aforesaid, continue to take under receipts, further sums from the said creditor, the aggregate amount whereof will come to Rs. 100 and all the sugar-canes shall stand hypothecated for the entire mutalaba (amount advanced) aforesaid, and the price of the sugarcanes supplied will be set off against the total mutalaba peshgi and taken under receipts aforesaid, and the interest thereon, which under this contract is payable by me up to the time of the

supply of the sugarcane; that if, after the mutalaba aforesaid, has been set off, a surplus amount payable to me by the said creditor on account of price of sugarcane be found to have accumulated, I, the executant, shall on demand, take it interest free; and I shall pay up the mutalaba, if any, found due by me to the said creditor when the accounts will be squared after the end of the work in the Karkhana, and in case of default I shall pay interest thereon (6) that the quantity of the hypothecated sugarcane, which I have sold, will be (7)...(8) that I, the executant, shall after this contract, no longer have any proprietary right of any kind in the hypothecated sugarcane referred to above (9)....

46. This instrument is on a printed form, to which is affixed an impressed sheet with a stamp of the value of two annas, and is attested by three witnesses. It is not registered. The suit giving rise to this reference was brought on 11th May 1939 by L.H. Sugarcane Factory Limited, against Moti in the Court of Small Causes at Pilibhit for the recovery of a sum of Rs. 35, together with Rs. 12.4-0 as interest, total Rs. 47-4-0, on the allegation that Moti had neither supplied the sugarcane nor repaid the sum of Rs. 35 which he had taken as an advance. The instrument dated 16th May 1936, executed by the defendant in favour of the plaintiff, was, as already stated, produced by the plaintiff in support of the claim. The office of the Court of Small Causes reported that the instrument required a stamp of the value of four annas and that consequently the document was inadmissible in evidence until the deficiency of two annas in the stamp, together with a penalty of Rs. 5, had been made good. The counsel for the plaintiff contested this report and, after hearing his arguments, the Court of Small Causes drew up a statement of the case and referred it to this Court. The matter originally came up before a Bench of three Judges, as required by Section 57, Sub-section (2), Stamp Act, and that Bench found it necessary to refer it to a larger Bench. Mr. G. Section Pathak has appeared for the Sugar Factory and the Advocate-General has appeared for the Crown. There has been no appearance on behalf of Moti.

47. In order to determine the amount of duty with which the instrument in question is chargeable, it is necessary to determine the precise nature of the instrument. In my opinion this instrument has three characteristics. Firstly, it is an agreement by the defendant to sell to the plaintiff the whole crop of the sugarcane grown by the defendant in certain fields in a particular year for a certain price, and certain terms agreed upon between the parties as to delivery and the payment of price are embodied in the deed. Learned Counsel are agreed that the instrument does possess this characteristic. Secondly, it embodies a mortgage of the sugarcane crop in lieu of an advance taken by the executant at the time of the execution of the deed and of certain future advances. There is no controversy about this characteristic also. Thirdly it embodies a transaction which amounts to a "bond" within the meaning of that expression as defined in Section 2 (5), Stamp Act. There is considerable controversy on this point. The question that arises for consideration is whether Section 6, Stamp Act, is applicable or not, and in either case, what is the duty with which the instrument is chargeable.

48. The arguments of Mr. Pathak, in a nut-shell, are these. He urges that that portion of the instrument which embodies an agreement to sell the sugarcane crop comes within the exemption laid down in Clause (a) under the heading "exemptions" in Article 5 of Schedule 1, Stamp Act. The contention is that Article 5 is therefore not applicable. The next argument is that the instrument does not amount to a "bond" at all and that therefore Article 15 is not applicable. The contention then is that thus only that portion of the instrument which evidences a mortgage of the sugarcane crop remains and that the duty already paid is sufficient under Article 41 (b) as the sum secured, according to Mr. Pathak, does not exceed Rs. 100. It is next argued that, even if the instrument does amount to a "bond" Article 15 does not apply as that article, learned Counsel contends, is a "residuary" article, and that therefore Article 41 alone remains to be applied. The contention is that no question therefore arises as to the application of Section 6 of the Act. It is further argued that, even if Article 15 is not a "residuary" article in the sense contended for by learned counsel, Article 15 is excluded by the provisions of Section 40, U.P. Agriculturists' Relief Act (U.P. Act 27 of 1934) as the executant, Moti, is admittedly an "agriculturist" within the meaning of that Act.

49. It is urged that the stamp duty on that portion of the instrument which amounts to a "bond" will therefore be regulated by Schedule 5, U.P. Agriculturists' Relief Act. The argument is that Schedule "5, Agriculturists' Relief Act, must be taken, by virtue of the provisions of Section 40 of that Act, to be substituted for Article 15 of Schedule 1, Stamp Act, so far as that portion of this particular instrument which is a "bond" is concerned. It is next argued that Section 6, Stamp Act, must therefore be applied to these circumstances, that is, on the footing that one part of the instrument is not chargeable with duty at all, another part of the instrument is chargeable with duty under Article 41 (b), Stamp Act, and the third part is chargeable with duty in accordance with col. 2 of Schedule 5, U.P. Agriculturists' Relief Act. As already stated according to Mr. Pathak the amount or value of the "bond" in this instrument does not exceed Rs. 100. So it is pointed out that the stamp duty provided for a "bond" of that value in col. 2 of Schedule 5, U.P. Agriculturists' Relief Act, is annas two and that the stamp duty chargeable under Article 41 (b), Stamp Act, for every sum secured not exceeding Rs. 100 is also two annas. It is therefore argued that the two duties being the same, only one duty of two annas can be levied in consequence of the provisions of Section 6, Stamp Act, and that that duty having been paid on the instrument, it must be held to be sufficiently stamped.

50. I shall deal with the arguments of Mr. Pathak in the order in which they are given above. I am unable to accept the argument that the exemption laid down in Article 5 of Schedule 1, Stamp Act, can be applied to the instrument before us. The portion of that article with which we are concerned runs thus: "Exemptions. Agreement or memorandum of agreement: (a) for or relating to the sale of goods or merchandise exclusively." Mr. Pathak contends that the word "exclusively" qualifies "goods or merchandise." He therefore argues that the

agreement in the present case being to sell certain goods alone (namely the sugarcane crop), and to sell nothing else, the exemption is applicable. The argument in my opinion is not well founded. The word "exclusively" is an adverb and cannot qualify a noun. In my judgment what it qualifies here is the preposition "for" and the participle "relating," or the phrase "for, or relating to, the sale of" introduced by the preposition and the participle, all of which it can qualify-under the rules of grammar. In other words, the exemption will apply only if the instrument is so framed as to amount to a mere agreement to sell (goods or merchandise) and has not got any other characteristics. As already stated, the instrument before us does possess more than this one characteristic. Learned Counsel concedes that it has at least one more characteristic, namely the mortgage of the sugarcane crop. That being so, the instrument before us is not in my opinion covered by the exemption which is sought to be applied. Even if the point were *res integra*, I would have arrived at this conclusion on the language of the exemption clause relied upon by Mr. Pathak and quoted above. My conclusion however is supported by high authority in this Court, namely the decision of a Bench of three Judges in Reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue, .

51. There has been some discussion at the Bar as to the portion of the judgment in that case which is applicable to the case before us. The reference in that case was in respect of three separate instruments which were independent of one another and the judgment deals with each instrument separately. It seems to me however that the portion of the judgment that deals with document No. 1 is the only portion which is applicable to the instruments which we have to consider. Of the three instruments in that case, the one which is described as document No. 1 in that judgment is the only one which is practically identical with the instrument before us. In my opinion the portions of the judgment in that case which deal with the second and the third instruments can be of no assistance for the purposes of the case before us as those instruments were materially different from the one which we have to consider. The judgment of the Madras High Court in *Kyd v. Mahomed* ("92) 15 Mad. 150 also supports the view that the instrument in question cannot be brought within the purview of the exemption in Article 5 of Schedule 1, Stamp Act. My conclusion therefore is that the exemption laid down in Article 5 of Schedule 1, Stamp Act, does not apply to the instrument in question and that the instrument in question is chargeable under Article 5.

52. Coming now to the next point, I agree with those of my learned brothers who hold that one of the characteristics of the instrument before us is that of a "bond," and that the argument of Mr. Pathak to the contrary is not well founded. It is unnecessary to repeat the reasons which have been given at length in the judgments of those of my learned brothers who have arrived at that conclusion. I may however point out that the view that the instrument is also a "bond" is supported by the decision of this Court in the case mentioned above, viz., Reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue, . I would also refer to the cases in *In the matter of Gajraj Singh* ("87)

9 All. 585 and Reference u/s 46, Stamp Act ("85) 8 Mad. 87 (FB) the decision on the first of the two documents dealt with in that case; and in *In Re: Ralli Bros.*, .

53. The next argument of Mr. Pathak, namely that Article 15 does not apply, even if the instrument is held to come within the definition of "bond" inasmuch as Article 15 is a "residuary" article, is also not in my opinion well founded. The argument is that if any portion of an instrument comes within any article of Schedule I, Stamp Act, other than Article 15, the latter article cannot apply even to that portion of the instrument which does amount to a "bond" and to which that article would otherwise be applicable. In my judgment there is nothing in Article 15 which can justify such a wide proposition. If the intention of the Legislature had been what Mr. Pathak contends it to be, there was no necessity for the words "not being a debenture (No. 27) and." The Legislature would not also have added the footnote : "see Administration Bond (No. 2), Bottomry Bond (No. 16), Customs Bond (No. 26), Indemnity Bond (No. 34), Respondentia Bond (No. 56), Security Bond (No. 57)." The phrase "not being otherwise provided for" qualifies the word "bond" with which the article begins. Thus, omitting the parentheses, we have : "bond, not being otherwise provided for...." So what is spoken of here as "not being otherwise provided for by this Act, or by the Court-fees Act, 1870" is a "bond as defined by Section 2(5)." In other words - apart from the case of a "debenture" - before an instrument, which comes within the definition of "bond" given in Section 2(5), can be excluded from the operation of Article 15, which is the general article for "bonds," it must be shown that it is one of those "bonds" which are provided for as such either by the Stamp Act or by the Court-fees Act, 1870. Article 15 is a residuary article in this sense, but not, in my judgment, in the wide sense urged by Mr. Pathak. Reliance has been placed on the decision of a Full Bench of the Calcutta High Court in *In Re: Reference under Section 113 read with Order 46, Rule 1, Civil P.C.*, . It has been observed in the judgment in that case that

Article 15 is of a residuary character intended for bonds which cannot be assigned to any other of the articles of the Stamp Act....

54. If the learned Judges intended to hold that Article 15 is a residuary article in the wide sense contended for by Mr. Pathak, I can only say, with profound respect, that I am unable to agree. Mr. Pathak has also relied on a similar observation made in the judgment of this Court in *Reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue*, , which has already been referred to. That observation is contained in that part of the judgment which deals with the third instrument which was the subject of the reference in that case. A perusal of the judgment will show that that instrument was an agreement to sell sugarcane, pure and simple, and did not come within the definition of "bond" at all, as the undertaking to deliver the sugarcane was "incidental or merely ancillary to the obligation to sell." That being so, no question of the application of Article 15 ever arose and the observation relied upon is clearly an obiter dictum. In any event, as I have said above, I am, with

great respect, unable to agree with such an interpretation of Article 15. Furthermore, it seems to me that the method followed by Mr. Pathak of dealing with the instrument in question piecemeal, and assigning one part to one provision of the law, another part to another provision of the law and a third part to a third provision of the law, and then urging that the instrument is free from duty or that the duty already paid is sufficient, is not sound. The document must be looked at as a whole. I now come to the last point raised by Mr. Pathak, namely the one based on Section 40, U.P. Agriculturists' Relief Act. That section runs thus:

(1) Notwithstanding anything contained in the Stamp Act, 1899, and the rules made under the Registration Act, 1908, the stamp duty and the registration and copying fees on bonds of value or amount not exceeding rupees three thousand, executed by an agriculturist and registered under the Registration Act, shall be as laid down in Schedule 5.

(2) If a bond is executed on a form printed under the authority of the Local Government, no copying fee shall be leviable for making a copy or a note of the bond in the books prescribed under the Registration Act, 1908.

55. The argument, put briefly, is that the word "and" in the phrase "executed by an agriculturist and registered..." should be read, not as "and" but as "or." It is urged that it is a recognized principle of interpretation of statutes that "or" should be substituted for "and," and vice versa, if it is necessary to do so in order to give effect to the real intention of the Legislature. As to the intention of the Legislature, it is argued that the object of this piece of legislation was to give relief to "agriculturists," and that the Legislature could not therefore have intended to impose on "agriculturists" the additional burden of having to get the document registered before they could obtain such benefits as Schedule 5 of the Act purports to confer upon them. It is pointed out that the Legislature had already imposed a burden on "agriculturists" by Section 39 of the Act, in that it made the execution of a document compulsory before they could obtain any benefit under the Act, and it is urged that the Legislature could not have intended to impose a further burden. The argument is that the execution of a document would involve the "agriculturists" in the expenditure of some money. There are several answers to this argument. In the first place, the argument is self contradictory. The moment it is admitted - as it has to be admitted - that the Legislature by Section 39 has imposed a burden which did not exist before, by insisting that every loan given after the date on which the Act comes into force shall be evidenced by a written document, the argument based on "relief" is destroyed. The Legislature must clearly have had some object in insisting upon transactions of loan entered into by "agriculturists" being reduced to writing. One apparent object that suggests itself is that the existence of a document would safeguard the debtors against false claims being put forward by unscrupulous and dishonest creditors. That being so, is there anything strange in the Legislature intending that the document should also be registered? That

registration will considerably strengthen the safeguard which the Legislature intended to provide cannot be denied. In the second place, I am unable to appreciate the argument based on the intention of the Legislature to give "relief" to "agriculturists." Can it be suggested that the intention of the Legislature, when they placed the U.P. Agriculturists' Relief Act on the statute book, was that in future "agriculturists" would have to pay for nothing at all? For, that, to my mind, is what Mr. Pathak's argument would amount to.

56. In the course of the arguments it was suggested that the very name of the Act shows that the intention of the Legislature was to give "relief to "agriculturists." The assumption underlying this suggestion is so manifestly untenable that I shall content myself by pointing out that the intention of the Legislature, as appears from the Act itself, was "to make provision for the relief of agriculturists from indebtedness." It was not, and could not have been, the intention to bring into existence a class of persons who could obtain everything for nothing. It is also noteworthy that the Legislature, recognizing that it was imposing an additional burden on "agriculturists" by insisting that every transaction of loan entered into by them should be reduced to writing, did what it considered necessary for minimizing that burden by enacting Sub-section (4) of Section 39. Similarly, it seems to me, the Legislature, recognizing that by requiring registration of the document before Schedule 5 of the Act could be taken advantage of, it was imposing another burden, did what it considered necessary to minimize that burden by enacting Sub-section (2) of Section 40, by which it is provided that if a bond is executed on a form printed under the authority of the Local Government no copying fee shall be leviable. The very fact of the enactment of Sub-section (2) of Section 40 shows, in my opinion, that the intention of the Legislature was that not only must transactions of loan entered into by "agriculturists" be evidenced by a written document, but that those documents must also be re-registered, before advantage "could be taken of Schedule 5 of the Act.

57. It has also been urged by Mr. Pathak that if his argument is not accepted an anomaly would result inasmuch as the total of the columns headed "stamp duty" and "registration fee," to say nothing of the last column "copying fee" in Schedule 5, U.P. Agriculturists' Relief Act, in the case of bonds exceeding Rs. 500 in value, comes to more than the stamp duty laid down in Article 15 of Schedule 1, Stamp Act. But this is not in my opinion, a correct way of looking at the matter. Article 15, Stamp Act, lays down only the stamp duty. For purposes of comparison, it is only col. 2 of Schedule 5, U.P. Agriculturists' Relief Act, namely the one headed "stamp duty," which should be looked at. Furthermore, it may well be that the Legislature thought that those "agriculturists" who possessed sufficient credit to be able to borrow more than Rs. 500 should before they could take advantage of Schedule 5, pay a duty which is proportionately somewhat higher than the duty paid by those who borrow smaller amounts. It is not without significance that whatever benefit is intended to be conferred by Schedule 5, Agriculturists' Relief Act, is confined to bonds of the maximum

amount of value of Rs. 3000. Lastly, even if an anomaly exists and it is open to doubt whether the consequence pointed out by Mr. Pathak was contemplated when the Act was passed, this Court can only construe statutes as they stand and, as was observed by Sir Lawrence Jenkins in *In re Ralli Bros* ("06) 8 Bom.L.R. 234 "if amendment be needed it must be by the Legislature."

58. My conclusion therefore is that the intension of the Legislature in enacting Sections 39 and 40, U.P. Agriculturists' Relief Act, was not only that the transaction of loan must be [evidenced by a written document, but also "that the document should be registered before Schedule 5, Agriculturists' Relief Act, could be made applicable to bonds executed by agriculturists. The argument that it is necessary to substitute the word "or" for the word "and" in the phrase "executed by an agriculturist and registered" in Section 40, Agriculturists' Relief Act, does not therefore arise. As has already been stated, the instrument before us is not registered. Section 40, U.P. Agriculturists' Relief Act, cannot therefore in my opinion, apply to it. Further I may add that in my opinion the argument of the learned Advocate-General, that Section 40, U.P. Agriculturists' Relief Act, is applicable only to bonds simpliciter and not to instruments which possess other characteristics also, is not without force. As I have held that the instrument in question does not come within Section 40, U.P. Agriculturists' Relief Act, it is not necessary to consider the validity of the argument that Section 6, Stamp Act, should be applied after holding that the instrument is governed, not by Article 15 of Schedule 1, Stamp Act, but by Section 40 and Schedule 5, U.P. Agriculturists' Relief Act. It seems to me however that this argument ignores the word "thereunder" which occurs in the phrase "where the duties chargeable thereunder are different" in Section 6. It now remains to determine the amount or value secured by the instrument in question before the answer to the reference can be arrived at. The relevant portion of the instrument is para. 5 which I have quoted at the inception of this judgment. It will be convenient briefly to reproduce here the essential words. They are:

...I...shall, in addition to the zare peshgi (advance money) aforesaid, continue to take, wider receipts, further sums .. the aggregate amount whereof will come to Rs. 100 and all the sugar-canes shall stand hypothecated for the entire mutalaba (amount advanced) aforesaid, and the price of the sugarcanes supplied will be set of against the total mutalaba...sure peshgi and taken under receipts...aforesaid...and I shall pay up the mutalaba, if any, found due by me....

59. The word "whereof" in the opening portion of this passage can, in my opinion, only refer to "further sums," and to nothing else. Thus, the maximum of Rs. 100 was laid down for the future advances alone and did not include the sum of Rs. 35 already borrowed. The words and phrases which I have under-lined (here italicized) in the passage reproduced above seem to me further to put the matter beyond doubt. My opinion therefore is that the amount or value secured by this instrument is Rs. 135. The duty chargeable under Article 15 on a bond of that amount or value, being higher than the duty leviable under Article 41 in

respect of a mortgage of sugarcane crop to secure that sum and the duty laid down in Article 5, is the proper duty with which the instrument in question is chargeable. I would answer the reference accordingly.

Mulla, J.

60. This is a reference u/s 60(1), Stamp Act, 2 of 1899, by the learned Judge of the Small Cause Court at Pilibhit. It relates to a document dated 16th May 1936 executed by a cultivator of sugarcane in favour of a sugar factory. The document in question is apparently a memorandum of the various terms of an arrangement arrived at between the parties. The true nature and scope of this document is a vital question which arises for consideration in this reference. The extraordinary importance of the question arises from the fact that a very large number of documents of very nearly the same character has already been executed all over the province and the decision in the present case will govern not only those cases but also others that are bound to arise in future. Any decision one way or the other will obviously affect the revenues of the province to an appreciable extent.

61. In order to clear the ground for a discussion of several important questions of law which arise in this case it is necessary to set out the terms of this document in some detail. The document begins with a statement on the part of the executant that he was mortgaging the whole of the sugarcane crop of a specified plot of land in consideration of a sum of Rs. 35 which he had previously received by way of advance from the mortgagee in connexion with an agreement to sell the sugarcane crop arrived at between the parties. The property in question was offered as a security not only for the amount already mentioned but also for any future sums that were to be received by the mortgagor under the agreement. The document then goes on to set out the terms of the agreement in eight separate paragraphs.

62. In para. 1 the executant undertakes to supply the whole of the mortgaged crop subject to the condition that it will not be less than a certain quantity to be fixed between the parties at a certain time and all the expenses of transport from the field to the weighing machine of the mortgagee were to be borne by the executant himself. It is further provided in this paragraph that from the beginning to the end of the season during which the sugarcane factory will continue to run the executant will supply sugarcane in accordance with a certain amount fixed by the mortgagee for each day. Paragraph 2 does not contain any material condition and sets out only an agreement on the part of the executant that if the sugar factory was not working on any particular day for some reason or another he would not carry sugarcane to the factory on that day for being weighed and shall not have it peeled provided he is given one day's notice. In para. 3 the executant undertakes to supply sugarcane of a specified quality and in a specified condition and on his failing to do so the mortgagee would be entitled to refuse the supply. Paragraph 4 lays down that the executant will obtain a sarkhat from the mortgagee for the amount of sugarcane supplied by

him and will be entitled to receive payment for it at the Government rate.

63. In para. 5 which is of considerable importance for the purpose of deciding a point which arises for consideration in the case the executant states that in addition to the above-mentioned amount received by him by way of an advance he would continue to take further sums of money from the mortgagee the aggregate of which will not exceed Rs. 100 and the sugarcane crop will remain hypothecated for the whole of the amount thus received by him from the mortgagee, It is further provided in this paragraph that the amount due to the mortgagee shall be deducted from the price of the sugarcane supplied by the executant from time to time under the agreement. Lastly, it is provided that there will be an accounting between the parties and the executant will be entitled to receive any money due to him as the price of the sugarcane supplied by him to the mortgagee after deduction of the money due to the mortgagee and in the alternative he will be bound to pay any money found due to the mortgagee after the deduction of the total price of the sugarcane supplied by him. Paragraph 6 contains a very significant statement on the part of the executant to the effect that he had sold the crop which he had mortgaged as stated previously in the document with an undertaking that the total quantity of the crop to be supplied by him would not be less than the minimum fixed under para. 1 and that he shall be liable to a penalty if the supply made by him fell below such minimum. Paragraph 7 contains an assurance given by the executant that the crop which he had mortgaged was not the subject of any previous transfer and that he had obtained money from the mortgagee on that assurance and would be liable to prosecution for cheating if that assurance turned out to be false. Paragraph 8 also embodies a very important statement on the part of the executant to the effect that after the execution of the document he will have no right of ownership in the crop which he had mortgaged and will further be responsible for cutting the crop and for transporting it to the weighing machine of the mortgagee at his own expense in accordance with the agreement. It was further provided that in the event of his failing to do so the mortgagee -would be entitled to get the crop cut by his own servants and to recover the costs of doing so from the executant.

64. The document in question is attested by three witnesses and has been scribed on a printed form which has been affixed to an impressed sheet bearing a stamp of two annas. When this document was produced in the Court of the learned Small Cause Court Judge of Pilibhit an objection was taken by the office on the ground that it was insufficiently stamped inasmuch as it amounted to a bond within the meaning Section 2(5), Stamp Act, and was at the same time an instrument falling within the purview of Article 40 of Schedule 1, Stamp Act, relating to mortgage deeds so that Section 6, Stamp Act, which provides for instruments falling within two or more descriptions, came into operation and the instrument in question was chargeable with the higher duty prescribed by Article 15 of Schedule 1. On behalf of the plaintiff who had produced the document it was contended that it fell entirely within the purview of Article 41 of Schedule 1, Stamp Act, which deals with mortgage of a crop and had consequently been

properly stamped, having regard to the amount of the sum secured by it. It was conceded that the document in question evidenced also an agreement to sell sugarcane crop, but it was pleaded that so far as that character of the instrument was concerned, it fell within exemption (a) to Article 5 of Schedule 1 which deals with "agreement or memorandum of an agreement." The contention was that the part of the instrument evidencing an agreement to sell sugarcane crop was an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively. On this basis it was argued that the instrument in question was, not chargeable with duty under two different articles of Schedule 1 and consequently Section 6 of the Act did not come into operation and the instrument had been rightly stamped under Article 41.

65. The learned Small Cause Court Judge arrived at the conclusion that the plaintiff's contention was not sound and the instrument in question amounted to a bond within the meaning of Section 2(5) of the Act and was chargeable with duty as such under Article 15 of Schedule 1. He found however that the matter was not quite free from doubt and he has therefore referred the following question to this Court:

Whether the instrument dated 16th May 1986 is a bond as denned u/s (2)(5), Stamp Act, chargeable with the duty provided for under Article 15, Schedule 1 of that Act or is it an agreement for or relating to sale of goods or merchandise exclusively covered by Exemption (a) of Article 5 of Schedule 1?

66. Another point also arose for consideration in connexion with the instrument in question which is the subject of another question referred to this Court by the learned Judge. It is admitted that Moti, the executant of the document, is an agriculturist within the meaning of Section 2, U.P. Agriculturists' Relief Act (Act 27 of 1934). It was contended on behalf of the plaintiff that even if the instrument in question is held to be a bond within the meaning of Section 2(5) of the Act still it being a bond executed by an agriculturist the question of the proper stamp duty payable on it must be governed by Section 40, U.P. Agriculturists' Relief Act, which runs as follows:

Notwithstanding anything contained in the Stamp Act, 1899, and the rules made under the Registration Act, 1903, the stamp duty and the registration and copying fees on bonds of value or amount not exceeding Rs. 3000, executed by an agriculturist and registered under the Registration Act, shall be as laid down in Schedule 5.

67. It may be noted here that the instrument in question has not been registered but it was contended that so far as the stamp duty payable on it was concerned, Schedule 5, U.P. Agriculturists' Relief Act, was applicable and the stamp duty actually paid on the instrument was in accordance with that schedule". The learned Small Cause Court Judge is of the opinion that this contention is not sound because the instrument in question has not been registered and consequently Schedule 5, U.P. Agriculturists' Relief Act, is not applicable to it. On

this point, however, different views have been expressed by different Judges of the subordinate Courts and hence the learned Small Cause Court Judge has considered it necessary to refer the matter to this Court in the following terms:

If it is a bond, whether the duty chargeable is that provided for under Article 15 of Schedule 1, Stamp Act, or that provided for under Schedule 5, U.P. Agriculturists' Relief Act, even though the instrument is not registered, it being admitted that the executant is an "agriculturist" within the meaning of the term u/s 2(1), U.P. Agriculturists' Relief Act.

68. The first question for consideration obviously is : What is the true nature and scope of the instrument in question? The essential terms of the instrument have already been set out above, and looking to those terms I am definitely of the opinion that the instrument has two separate and independent characters. In my judgment, it is primarily an agreement by the cultivator to sell his sugarcane crop to the sugar factory. He was anxious to sell his crop and the sugar factory was equally anxious to obtain it. It was, however, necessary for him to get some money for growing the crop and he could acquire it either by taking a loan from the factory itself or from some independent creditor. The former alternative was obviously convenient to both parties. The loan was accordingly taken and it was secured by a mortgage of the crop. This transaction has given the instrument its secondary though entirely independent character of a hypothecation of crop for securing the payment of a loan. The instrument has thus a dual character and it is not possible to contend that anyone of the two characters which it exhibits is its fundamental character and all the stipulations contained in it are attributable to that character as subsidiary or auxiliary provisions. The delivery of the crop in a certain specified manner and on certain specified conditions may be attributed to the agreement to sell, but that cannot be said of the provision for hypothecating the crop. Similarly, the hypothecation of the crop may be deemed to be a subsidiary provision to the transaction of loan but it is entirely independent of the agreement to sell. We have to bear in mind this dual character of the instrument and then to consider the fact that it is attested by witnesses and contains two separate undertakings by the executant, firstly an obligation to pay money and secondly an obligation to deliver the sugarcane crop. Now, the question which arises for consideration is whether an instrument like the one that we have before us which has two separate and independent characters which is attested and by which the executant obliges himself to pay money to the sugar factory and to deliver the sugarcane crop does or does not fall within the purview of "bond" as defined by Section 2(5), Stamp Act. Section 2(5) runs as follows:

"Bond" includes : (b) Any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and (c) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another.

69. In my judgment one has only to read this section in order to hold that the

document in question falls within its purview. The argument on behalf of the plaintiff is that a part of the instrument amounts only to an agreement to sell goods or merchandise exclusively with the ancillary condition that the goods shall be delivered in a particular condition and in a particular manner. Being such an agreement, it falls within exemption (a) to Article 5 of Schedule 1, Stamp Act. The remaining part of the instrument is entirely covered by Article 41 of Schedule 1, Stamp Act, which deals with mortgage of a crop

including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage.

70. In my judgment when a question arises as to whether a certain instrument does or does not fall within the purview of "bond" as defined by Section 2(5) of the Act the instrument must be considered as a whole and it is not permissible to divide it into several parts and then to assign each one of such parts to some other article of Schedule 1 of the Act. If the argument advanced on behalf of the plaintiff is accepted, we have to look at the instrument in question at first as an agreement to sell and again as mortgage of a crop and then to hold that some of the stipulations which it contains are subsidiary to its character as an agreement to sell and the rest to its character as mortgage of a crop. I see no justification for thus looking piecemeal at the instrument before deciding the question whether it does or does not fall within the purview of "bond" as defined by Section 2(5) of the Act. Apart from this general consideration, I find that the agreement to sell in the present case is not covered by Exemption (a) to Article 5 of Schedule 1 as contended for by the plaintiff. The terms of the exemption are:

Agreement or memorandum of agreement : (a) for or relating to the sale of goods or merchandise exclusively, not being a note or memorandum chargeable under No. 43.

71. The latter part does not apply to the present case and all that we have to consider is whether the agreement to sell in the present case is an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively. It has been strenuously contended on behalf of the plaintiff that the agreement fulfils this condition because the subject-matter of the same is nothing but goods. It is argued that the word "exclusively" qualifies only the two words "goods or merchandise" immediately preceding it. Apart from the fact that this interpretation is not consistent with the rules of grammar, it appears to me that it is wholly against the spirit of the provision. In my judgment the word "exclusively" must govern the whole clause "relating to the sale of goods or merchandise". It is not only an agreement for or relating to the sale of goods and merchandise along with something else which is excluded by the language of the exemption, but also any transaction which combines in itself two separate characters, namely, the sale of goods or merchandise and their hypothecation. In the latter case it is clear to my mind that the transaction cannot be said to be an agreement or memorandum of agreement for or relating to the sale of goods or

merchandise exclusively. It relates not only to the sale of goods or merchandise, but also to their hypothecation for securing a loan. I am therefore clearly of the opinion that an instrument like the one we have before us which has a dual character cannot be covered by Exemption (a) to Article 5. This view receives strong support from a decision of the Madras High Court in 15 Mad 150.4 Their Lordships of the Madras High Court were concerned in that case with an agreement to sell some goods which contained also some stipulations relating to the payment of godown rent and fire insurance as also some relating to reference to arbitration. Their Lordships held that the stipulations in question were only col. lateral and subsidiary incidents relating to the sale of the goods and the transaction evidenced by the document before them was fundamentally only an agreement for or relating to the sale of goods which was covered by Exemption (a) to Article 5. Their Lordships however laid down a test for seeing whether an instrument does or does not fall within the purview of that exemption in the following terms:

The test which should be applied is to see whether the document evidences only a transaction of sale or a sale and some other independent transaction, and if the former the number of subsidiary stipulations it may contain cannot alter the nature of the transaction.

72. In that case their Lordships were not concerned with an instrument having a twofold character like the one we have before us and with due deference I find myself in entire agreement with the test laid down by them. Applying that test to the present case, I have no hesitation in holding that the instrument in question, which evidences not merely an agreement to sell the sugarcane crop but also a hypothecation of the crop for securing a loan, cannot fall within exemption (a) to Article 5. The same view of the matter was taken by a special bench of this Court in Reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue, . In that case the learned Judges had to deal with a document which displayed the same two-fold character which is exhibited by the document under consideration and it was contended before them that it amounted to an agreement which fell within exemption (a) under Article 5. They repelled the contention with the following observations which apply fully to the present case:

We have considered the language of exemption (a) under Article 5, which exempts from duty an "agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively not being a "note" or "memorandum" chargeable under No. 43." It is clear that the document, taken as a whole, cannot possibly be considered to be a mere agreement. All mortgages must be agreements first and mortgages afterwards. To this extent the deed in question is an agreement; but as-an interest in property is created by the document, it is a mortgage and not merely an agreement. Similarly, the stipulation which, as held by us, amounts to a "bond" may be considered to be an agreement in so far as the executant agrees to do something; but falling as it does within the definition of a bond, it is something more. Apart from this, we do

not think that the exemption already referred to applies to this case for the important reason that it is not "exclusively" an agreement for or relating to the sale of goods or merchandise in view of our finding that it is also a combination of a mortgage of crops and a bond.

73. It is clear therefore that the plaintiffs contention that a part of the instrument in question evidences an agreement to sell covered by exemption (a) under Article 5 falls to the ground, and there is a clear authority of this Court in the case cited above to support the view that an instrument having a two-fold character like the present one must be deemed to be a bond within the meaning of Section 2(5), Stamp Act. In my judgment in any view of the matter the instrument in question must fall within the purview of Section 2(5), Stamp Act. If it is looked upon as an agreement to sell which is not covered by exemption (a) under Article 5, the stipulation contained in it by which the executant undertakes an obligation to pay money makes it a bond within the meaning of Clause (b) of Sub-section (5) of Section 2 of the Act, even though it may be conceded that the stipulation by which he obliges himself to deliver the sugarcane crop is subsidiary to the agreement to sell. On the other hand, if we look upon it as mortgage of a crop with an agreement to secure the repayment of a loan, the stipulation by which the executant obliges himself to deliver the crop makes it a bond within the meaning of Clause (c) of Sub-section (5) of Section 2 of the Act. I derive further support for my view from the decision of a Full Bench of this Court in 9 ALL 5853 which was a reference by the Board of Revenue u/s 46, Stamp Act, 1 of 1879. In that case the document which the learned Judges had to consider was one executed by a grower of sugarcane whereby he borrowed a sum of Rs. 25 as earnest money and covenanted to deliver to the lender on a certain date 21 maunds of rab upon which he was to receive a profit of nine annas per maund over and above a price to be thereafter fixed at a meeting of growers. He further covenanted as follows:

If the supply of the rab be less than the fixed quantity, and the money still remains due, then the said money thus due, including the profits, shall be paid at the rate of Re, 1 per maund; that in case of my not supplying the rab at all, or selling it at some other place, I will pay the whole amount at once, including the said profits.

74. As collateral security he hypothecated the produce of a field of sugarcane the value of which was not stated. Three learned Judges held that it was a "bond" within the meaning of Section 3(4)(c) and No. 13 of Schedule 1 and with reference to the provisions of Section 7 was chargeable with stamp duty solely as a bond under No. 13, the contract being a single one. The view that I have taken is further fortified by two Full Bench decisions, one of the Bombay High Court in *In re Ralli Bros* ('06) 8 Bom.L.R. 234 and the other of the Madras High Court in Reference u/s 46, Stamp Act ('85) 8 Mad. 87 (F.B.). Their Lordships of the Bombay High Court had to consider an ordinary agreement for sale of cotton between two merchants which happened to be attested. It was conceded that the

agreement fell within the purview of exemption (a) under Article 5, but it was held that inasmuch as it was attested and contained an under, taking to deliver agricultural produce it fell within the purview of Section 2, Sub-section (5), Clause (c) of Act 2 of 1899 and was therefore chargeable with duty as a bond. In the Madras case the learned Judges were concerned with two promissory notes one of which was payable to order but both of which were attested. In the case of the promissory note which was only payable to a particular person and not to bearer or order they held that it became a bond as defined in the Stamp Act in consequence of attestation. With regard to the other promissory note which was payable to order they held that it could not be a bond as defined in the Stamp Act obviously because the definition of bond in the Act expressly excluded an instrument payable to bearer or order. In both cases mere attestation was deemed sufficient to convert an instrument into a bond. The view that I have taken is therefore fully supported by high authority and I have therefore no hesitation in holding) that the document in question must be deemed to fall within the definition of bond under Article 2(5), Stamp Act.

75. It has however been contended on behalf of the plaintiffs that even if the document in question is held to be a bond within the meaning of Section 2(5), Stamp Act, still it would not be chargeable as such under Article 15 of Schedule 1, Stamp Act, inasmuch as that article can be applied only when the transaction evidenced by the document cannot be assigned to any other article of Schedule 1. In support of this contention reliance is placed upon a Full Bench decision of the Calcutta High Court in *In re Reference from the Munsif, 4th Court, Habiganj* In Re: Reference under Section 113 read with Order 46, Rule 1, Civil P.C., . In that case the learned Judges had to consider a security bond executed by the next friend of a minor creditor upon an order made by the Court as a condition precedent to his withdrawing the decretal amount which had been deposited to the credit of the minor decree-holder. The bond in that case was stamped in accordance with Article 6, Schedule 2, Court-fees Act, and the question which arose for consideration, was whether it was properly stamped or whether it should have been stamped under the Stamp Act. Now Article 15 of Schedule 1, Stamp Act, which relates to bonds clearly provides that the article will not apply to a debenture or to an instrument which is otherwise provided for by the Stamp Act or by the Court-fees Act, 1870. The security bond which their Lordships of the Calcutta High Court had to consider in that case was held by them to fall clearly within the purview of Article 6, Schedule 2, Court-fees Act. That finding was enough for holding that it was excluded by Article 15, but their Lordships made some observations which undoubtedly tend to show that in their opinion Article 15 was of a residuary character intended for bonds which cannot be assigned to any other of the articles of the Stamp Act and are not provided for by the Court-fees Act. In Reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue, , to which reference has already been made, the learned Judges of the Special Bench made some observations in dealing with a document which was essentially different in its principal features from the one

which is now under consideration to the effect that

Article 15 does not apply as *ex hypothesi* it can apply only if such an agreement is not specifically provided for and that as Article 5 expressly deals with agreements of this description the operation of Article 15 is excluded.

76. On the basis of these oases the plaintiff's contention is that the document in question falls partly under Article 5 and partly under Article 41 and hence Article 15 being of a residuary character is not applicable. Upon a careful consideration of this question, I find myself unable to accept the plaintiff's contention. In my judgment, Article 15 excludes only such instruments as are covered by any one of the categories of bonds mentioned in the note appended to the article, namely, Administration bond, Bottomry bond, Customs bond, Indemnity bond, Respondentia bond and Security bond. It is noticeable that in describing bond as contemplated by Article 15 it is specifically provided that it should not be a debenture. There was no reason to make this specification if the Legislature intended to exclude from the operation of Article 15 all instruments which were otherwise provided for by some other article of Schedule 1, nor was it necessary to append any note to Article 15 unless it was intended to indicate that other articles providing for some type of bond were to be found in the Act and were to be applied before Article 15 came into operation. I am further of the opinion that the plaintiff's contention that Article 15 is a residuary article in the sense that it cannot apply so long as the instrument to which it is sought to be applied falls under any one of the other articles in Schedule 1 is repelled by necessary implication by the two decisions of the Bombay and the Madras High Courts to which reference has already been made.

77. As pointed out above, in the Bombay case the learned Judges had to deal with an ordinary agreement to sell goods between two merchants which was admittedly covered by exemption (a) under Article 5 of Schedule 1, but they held it to be a bond merely because it happened to be attested and thus fell within the purview of Section 2(5)(c) of the Act. It was never contended before their Lordships that Article 15 was inapplicable because the document was covered by Article 5. It is difficult to hold that their Lordships did not consider the question at all as to whether Article 15 would come into operation in spite of the fact that the document which they had to consider admittedly fell within the purview of Article 5, exemption (a). It was open to their Lordships to say that Article 15 could not be applied inasmuch as it was a residuary article and the document which they had to consider was provided for by another article. It is true that no definite argument was advanced before them that Article 15 was a residuary article, yet I am inclined to hold that this aspect of the matter could not have escaped their Lordships' attention. When they held that the document before them was chargeable as a bond under Article 15, they must have considered the question as to whether that article did or did not come into operation in view of the provision that it was to be applied only to instruments not otherwise provided for by the Stamp Act or by the Court-fees Act, 1870. The same observations

apply to the decision of the Madras High Court in which the learned Judges were concerned with a promissory note and held it to be a bond only because it happened to be attested. A promissory note is clearly provided for by Article 49 of Schedule 1, Stamp Act, and it was open to their Lordships to hold that even though the promissory note which they had to consider amounted to a bond within the meaning of Section 2(5) of the Act, yet it was not chargeable with duty under Article 15 because that article was of a residuary character and the promissory note which they had to consider was provided for by another article of the Stamp Act. In that case also, no definite question as to the residuary character of Article 15 was raised before them, yet I cannot help thinking that this aspect of the matter could not escape their Lordships' attention.

78. The same question could also have been raised in the case decided by a Bench of this Court which is reported in *In the matter of Gajraj Singh* ('87) 9 All. 585 but it was never raised. I am therefore inclined to hold upon a review of the authorities that Article 15 is a residuary article only in the sense that it cannot be applied to an instrument which is either a debenture or falls within the purview of any one of the six categories of bonds referred to in the note appended to it or is provided for by the Court-fees Act. Assuming for the purposes of argument that Article 15 can be applied only if all the other articles of Schedule 1 are exhausted, still I feel that the plaintiff's contention in the present case cannot be accepted because the document in question is not otherwise provided for as contemplated by Article 15. For the purpose of determining whether an instrument is or is not otherwise provided for as contemplated by Article 15 the instrument must be considered as a whole. As pointed out above, I see no justification for dividing the instrument into several parts and then trying to assign each part to a separate article. If the instrument taken as a whole falls within the purview of any one article then it may perhaps be argued with some force that it is excluded from the operation of Article 15. But whereas in the present case the instrument has a two-fold character and cannot possibly be assigned to any one article of Schedule 1 the argument to my mind has no force. I am not therefore prepared to hold that the document in question was otherwise provided for as contemplated by Article 15 and was therefore excluded from the operation of that article.

79. The result of the findings at which I have arrived is that the document in question has a dual character, being both an agreement to sell and a mortgage of a crop and also falls within the definition of bond u/s 2, Sub-section (5). Section 6, Stamp Act, therefore comes into operation and it is chargeable with the highest duty payable under any one of the three descriptions. It is therefore chargeable as a bond under Article 15 of Schedule 1 of the Act. In order to determine the duty payable under Article 15 it is necessary to determine the amount or value secured by the instrument in question. Having regard to the clear terms of para. 5 of the instrument in question I have no hesitation in holding that the amount secured was Rs. 35 which was initially taken by the executant as an advance plus the aggregate of further sums which he could

borrow under the agreement and the maximum of which was fixed at Rs. 100. The total of value secured thus clearly comes to Rs. 135 and the instrument in question is chargeable under Article 15 of Schedule 1 as a bond securing the payment of Rs. 135. The answer which I propose to the first question in the reference therefore is that the instrument dated 16th May 1936 is a bond within the meaning of Section 2(5), Stamp Act, and is consequently chargeable with the duty prescribed by Article 15, Schedule 1 of the Act for a bond securing a sum of Rs. 135 and is not an agreement for or relating to sale of goods or merchandise exclusively so as to be covered by exemption (a) under Article 5 of Schedule 1.

80. Coming now to the second question I venture to think that the position is perfectly simple if we take the language of Section 40, U.P. Agriculturists' Relief Act, in its plain and ordinary meaning. It is quite clear to my mind upon a plain interpretation of the language that a bond in order to attract the operation of Schedule 5 must have three qualifications : (a) that it should be of value or amount not exceeding Rs. 3000, (b) that it should be executed by an agriculturist and (c) that it should be registered under the Registration Act. It is only when all these three conditions are fulfilled that the benefit of Schedule 5 can be derived in respect of a bond. The main argument against this simple interpretation of Section 40 is that the Legislature must be deemed to have intended to give some relief to an agriculturist in the matter of stamp duty because it had imposed a burden upon him by enacting Section 39 of executing a "written document" as evidence of every loan taken by him. It is noticeable that in Sub-section (2) of Section 39 it is provided that

an entry shall be made in every such document specifying the date by which repayment must be made in order to earn the benefit of Section 39 and the rate of interest which shall prevail if repayment is made by such date.

81. It was considered necessary in Sub-section (4) of the same section to make a provision that if the entry which was compulsorily required by Sub-section (2) tended to change the nature of the document and thus made it liable to a higher duty it shall be ignored and the executant shall not be required to pay a stamp duty higher than that which would have been payable in respect thereof had it not contained the details mentioned in Sub-sections (1) and (2). Under Sub-section (1) of Section 39 it is incumbent on a creditor to supply a copy of the document to the debtor and Sub-section (4) provides that no copy supplied to the debtor as required by Sub-section (1) shall require any stamp duty. It is significant that no provision was made in Section 39 for giving any relief to an agriculturist in the matter of stamp duty though the burden of executing a written document was imposed upon him by that section. Section 39 was in my opinion the proper place for providing relief to the agriculturist in the matter of stamp duty if the Legislature intended to grant any such relief irrespective of the fact whether the document was registered under the Registration Act or not. I see no justification for assuming that the Legislature intended to confer any relief upon an agriculturist who had to execute a document u/s 39 but did not care to

have it registered.

82. It may well be that the Legislature intended that such documents should be registered as a sort of protection to the agriculturist and therefore the inducement which it offered to him for that purpose was laid down in Section 40, namely that if he executed that bond of a certain value and, got it registered under the Registration Act he shall be entitled to the special benefit conferred by Schedule 5. Nor do I see any reason to hold that the language of Section 40 as it stands frustrates the intention of the Legislature and it must therefore be twisted or turned in order to carry out that intention. I find no justification for dividing S.40 into two separate and independent parts and for holding that the part relating to the Stamp Act and the relevant portion of Schedule 5 shall apply when the document executed by an agriculturist is not registered and that the other part relating to the Registration Act and the relevant portion of Schedule 5 will apply only when the document is registered. Any such dissection of Section 40 only introduces unnecessary confusion which can be justified only on the ground that the Legislature definitely intended to give relief to the agriculturist in the matter of stamp duty even though he did not have his document registered. I do not find any justification for ascribing that intention to the Legislature and thus finding an excuse for not interpreting the language of Section 40 in its plain, simple and grammatical sense. My answer therefore to the second question in the reference is that the instrument in question is chargeable under Article 15 of Schedule I, Stamp Act, and not under Schedule 5, U.P. Agriculturists' Relief Act, because it is not registered and does not therefore fulfil all the requirements of Section 40, U.P. Agriculturists' Relief Act.

Dar, J.

83. In suit No. 347 of 1939, L.H. Sugar Factory Ltd. v. Moti, pending before the Judge, Small Cause Court, Pilibhit, a document was produced, hereafter called the instrument about which a question arose, whether it was duly and sufficiently stamped. The question being one of public importance both to the subject and to the Crown, the learned Judge has referred the case to this Court u/s 60 (I), Stamp Act, 1899, and the two questions propounded by him and which arise for our consideration are as follows:

(1) Whether the instrument dated 16th May 1936 is a "bond" as defined u/s 2(5), Stamp Act, chargeable with the duty provided for under Article 15, Schedule 1 of that Act or is it an agreement for or relating to sale of goods or merchandise exclusively covered by exemption (a) of Article 5 of Schedule 1? (2) If it is a "bond" whether the duty chargeable is that provided for under Article 15 of Schedule 1, Stamp Act, or that provided for under Schedule 5, U.P. Agriculturists' Relief Act, even though the instrument is not registered, it being admitted that the executant is an "agriculturist" within the meaning of the term u/s 2 (1), U.P. Agriculturists' Relief Act?

84. The document is dated 16th May 1936. It is attested by three witnesses and

it bears a stamp of 2 annas. It was executed by one Moti Khatik, a cultivator of village Beri Khera in Pilibhit district who had in that year grown a sugarcane crop in fields measuring 8 bighas kham particularized and specified in the said document in favour of L.H. Sugar Factory, Pilibhit, a joint stock concern which carried on the business of manufacturing sugar at Pilibhit. By this instrument Moti received and acknowledged an advance of Rs. 35 on a mortgage and a contract of sale of the crops in the said fields. He reserved the right to claim and receive further advances from the factory up to a maximum of Rs. 100. He promised to deliver the crops of the fields which he had sown to the factory at a specified price and under certain specified conditions during the working period of the factory. He agreed to receive the price of crops from time to time after setting it off first in advances made to him. He further promised" to pay such sum, if any, found due from him at the time of final accounting on the termination of the work of the factory and in order to secure payment of the advance already received and which he was to receive in future he mortgaged his crops in the said fields in favour of the factory. The instrument was drawn up in Urdu but an official translation has been placed before us and its material and relevant portions are as follows:

I, the executant, by hypothecating for the year 1344F, the sugarcane fields of eight bighas kham, bounded and specified as below and situate in mauza Beri Khera, pargana Pilibhit, district Pilibhit, which I had cultivated and produced, have taken, by promising to sell the said sugarcanes, a sum of Rs. 35 in cash, as a peshgi (advance money) on an interest payable at the rate of two pies per rupee per mensem from L.H. Sugar Factory Ltd., Pilibhit, through the Mufassil Cane Office; and that for such sums as I will take in future I shall abide by the following terms : (1) That, in accordance with the quota assigned by the creditor, I, the executant, shall supply, from the time of the start up to the finish of the work in the karkhana, the whole and the part of the sugarcanes at least to the extent of the estimate for September 1344, in English weight and according to the legal rate of the hypothecated sugarcane field. While defraying the cartage and other loading expenses, at such weighing machine of the karkhana in Pilibhit as will be assigned by the creditor aforesaid. (2) That I, the executant, shall continue to take from the said creditor the duplicated sarkhats to certify delivery of such sugarcanes as I will supply and I shall be entitled to receive from him the price thereof according to the prescribed rate; that no deductions from the weight of the said sugarcanes shall be made on account of dust or shortage due to any defect in the sugarcanes; but if on account of any illness or any terrestrial or celestial calamities the sugarcanes deteriorate and a Government communique be issued in respect thereof, I, the executant, shall be entitled to get payment for such sugarcanes according to the reduced rate fixed by the Government communique, (S) That whenever a necessity will dictate I, the executant, shall in addition to the zar-i-peshgi aforesaid continue to take, under receipts, further sums from the said -creditor, the aggregate amount whereof will come to Rupees 100 and all the sugarcanes shall stand hypothecated for the

entire mutaleba aforesaid and the price of the sugarcane supplied will be allowed a set off against the total mutaleba re : zar-i-peshgi and receipts aforesaid and the interests thereon which, under this contract, is payable by me up to the time of supply of the sugarcane; that if after the mutaleba aforesaid has been set off a surplus amount payable to me by the said creditor on account of price of sugarcane be found to have accumulated, I, the executant, shall, on demand, take it interest free; and that I shall pay up the mutaleba, if any, found due by me to the said creditor when the accounts will be squared after the end of the work in the karkhana and in case of default I shall pay an interest thereon at the rate of two pies per rupee. (4) That I, the executant, shall, after (enforcement of) this contract, no longer have any proprietary right of any kind in the hypothecated sugarcane referred to above; that I shall, however, be responsible for getting the sugarcane cut down and the stems prescribed by the creditor, weighed and delivered, so that the price thereof may be fixed in my presence and if I fail to do so the said creditor shall take delivery of the hypothecated sugarcane sold to him, after getting them cut down and weighed by his servants, and I shall have no objection to it and that I shall under such circumstances, be liable for payment of the servants' costs and shall accept as correct the weight fixed by the creditor.

85. On the face of it the instrument embodies two connected and allied but separate and separable transactions. In the first place there is a loan of Rs. 35 and of such further sums as may be lent in future up to a maximum of Rs. 100, this loan to be paid off by the sale and price of crops with a personal obligation to pay a sum, if any, found due on final accounting and to secure this loan there is a mortgage of the crops. In the second place there is a sale of entire crops of the fields, a portion of the price of which up to Rs. 100 was to be paid in advance and the rest was to be paid on or after delivery which was to continue during the working season of the factory. A controversy has arisen in the case whether the sale was the dominant aspect of the transaction or the mortgage was the predominant one. In my opinion this is a fruitless controversy. The sugar factory was interested in the crops and wanted them for the working of the factory and from their point of view the sale might have been a more important aspect of the transaction. The cultivator Moti wanted money to tend his crops and for his other purposes and he had no crops ready to sell and raise money. From his point of view a loan may well have been a more urgent aspect of the transaction. The material question is whether the instrument embodies one transaction or more than one.

86. Mr. Pathak contends that in substance there was only one transaction, namely that of mortgage and the sale of crops was only a method of payment of mortgage. Alternatively he contends that if the primary transaction be regarded as one of sale, the advances were only a pre-payment of price and the mortgage was ancillary and subsidiary to the sale, and in support of these contentions he relies upon a Full Bench case of this Court, Har Prasad Vs. Sewa and Others, , in which a transaction resembling the present one was regarded as a loan

transaction. The question which arose in the above case was whether a decree for money passed on the basis of a document resembling the instrument against an agriculturist could be converted into an instalment decree under the provisions of the U.P. Agriculturists' Relief Act. The power to convert the decree depended upon the fact whether the decree was passed on a loan transaction or not and the Full Bench expressed the view that the document represented a loan transaction and a decree passed on its basis could be converted into an instalment decree. No question arose in that case whether the document embodied one transaction or more than one transaction and whether in addition to a loan transaction there was not a transaction of sale also embodied in the document. The fact that the sale is of entire crops of the fields, considerably more in value than the sum of Rs. 100 which was at the outset to be advanced and the mortgage was confined to Rs. 100 only and that a number of conditions were inserted in the deed to ensure the due performance of the contract of sale and for compensation for its breach, makes the instrument embody two transactions of mortgage and sale, which, though allied and connected are separate and separable and in my opinion it cannot be said that the instrument embodies primarily and substantially only one transaction and the other is ancillary and subsidiary to it. The character of the instrument having been determined as one of sale and of mortgage both, what is the duty leviable against it? The Stamp Act, 1899, after enjoining in Section 3 that duty chargeable on instruments shall be in accordance with Schedule 1 provides in Section 5 and part of Section 6 as follows:

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one or such matters, would be chargeable under this Act.

6. Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule 1, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties....

And in relevant portions of Articles 5 and 41 of Schedule 1, stamp duty on instruments is as follows:

5. Agreement or memorandum of an agreement - (a) if relating to the sale of a bill of exchange : Two annas; (b) if relating to the sale of a Government security or share in an incorporated company or other body corporate: Subject to a maximum of Rs. 10, 1 anna for every Rs. 10,000 or part thereof of the value of the security or share; (c) if not otherwise provided for : Eight annas.

Exemptions.

Agreement or memorandum of an agreement - (a) for or relating to the sale of goods or merchandise exclusively not being a note or memorandum chargeable under No. 43 : (b) made in the form of tenders to the Government of India for or

relating to any loan; (c) made under the European Vagrancy Act, 1874; Section 17.

41. Mortgage of a crop including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is or is not in existence at the time of the mortgage; (a) when the loan is repayable not more than three months from the date of the instrument for every sum secured not exceeding Rs. 200: One anna; and for every Rs. 200 or part thereof secured in excess of Rs. 200: One anna; (b) when the loan is repayable more than three months but not more than (eighteen months) from the date of the instrument for every sum secured not exceeding Rs. 100: Two annas; and for every Rs. 100 or part thereof secured in excess of Rs. 100: Two annas.

87. On the face of it, the instrument in so far as it is a mortgage of crops it evidences an agreement to secure the repayment of a loan made upon the mortgage of a crop existing or future and it comes within the ambit of Article 41, Stamp Act, and in so far as it is an agreement for or relating to the sale of the crops, it comes within the ambit of Article 5 of Schedule 1, Stamp Act. So far there is no dispute. The only question is whether it comes within the exemption clause of Article 5 or not. Goods have been defined in Section 2(7), Sale of Goods Act (Act 3 of 1930) to include "growing crops" and Section 6(8), Sale of Goods Act, lays down:

Where by a contract of sale the seller purports to effect a present sale of future goods the contract operates as an agreement to sell the goods.

88. Sale of crops therefore would be an agreement relating to sale of goods within the meaning of the exemption clause of Article 5, Schedule 1, Stamp Act. It is also not disputed that if Moti, the executant of the instrument, on the day when he executed the instrument had executed two documents, by one of which he had made a mortgage of the crop and by the other had made a sale of the crop, he could have done so and in that case the document containing the mortgage would have been liable to duty under Article 41 and the document containing the sale would have been exempted from duty under exemption clause of Article 5 of Schedule 1, Stamp Act. Does it make any difference if instead of executing two separate documents he has put the two transactions in one instrument? This raises the question as to what is the meaning of the phrase "agreement for or relating to the sale of goods or merchandise exclusively" as used in the exemption clause of Article 5, Stamp Act, 1899. One view is that the exemption clause applies when the agreement relating to sale of goods stands singly in a document not accompanied by other transactions or by other agreements and relates to sale of goods alone and is not accompanied by sale of other articles and if the sale of goods happens to be incorporated in a document which also embraces other kinds of transactions, for example, mortgages and agreements, then the exemption clause ceases to apply and the agreement relating to sale of goods itself becomes liable to duty.

89. The other view is that the agreement relating to sale of goods is exempt from duty irrespective of the fact whether it stands singly in the document or in company of other transactions or whether it relates to a sale of goods alone or of other articles in company with it provided the agreement relating to sale of goods is distinct and separate and separable. It is contended that to bring exemption Clause (a) of Article 5 into play it is essential that the agreement must relate to the sale of goods or merchandise exclusively and that exclusiveness is a condition which governs both the agreement and the subject-matter of the agreement. I agree. In my opinion the benefit of exemption is extended to one class of transaction and to one class of transaction alone namely to agreements for or relating to the sale of goods or merchandise exclusively. And if with the sale of goods are mixed up other kinds of sales which are separable or other kinds of agreements which again are separable, those other kinds of sales and agreements will be liable to their duty under the schedule and will not be exempt under the exemption clause because they appear side by side or along with an agreement for or relating to the sale of goods. But I do not agree that an agreement for or relating to the sale of goods itself ceases to be exempt from duty and becomes liable to duty as such simply because it is embodied in a separable form in an instrument which contains other [transactions also. It is contended that the Stamp Act, 1899, attaches paramount importance to the frame of document and in order to determine duty under it every thing depends upon the form of the document and form is a matter which cannot be disregarded. And though, it might have been open to Moti to carry out the mortgage of crops and also the sale of crops by two documents executed on one and the same date without being called upon to pay duty for sale of crops, yet he lost this privilege by executing one document embracing both transactions. Here again I agree that frame of the instrument is an important matter and so is its form. But I do not agree that the substance of the transaction is a matter of no moment at all and it is one which can or should be wholly disregarded.

90. In my opinion the true interpretation of exemption Clause (a) of Article 5 is that the agreement for or relating to sale of goods is exempt from duty under Article 5 and this exemption is confined to the agreement for or relating to the sale of goods alone, and it does not protect other agreements or sales of other articles. But this exemption clause does not cease to be operative qua the agreement for or relating to sale of goods simply because such an agreement is incorporated in a document which embraces other separable transactions also or because such an agreement stands side by side with other agreements or other transactions incorporated in a document. Those other agreements and those other transactions will be liable to bear duty under the appropriate articles of the schedule, but the covenant relating to sale of goods will stand and remain exempt. It is said that in a case in the In Re: Reference by Junior Secretary Board of Revenue, a contrary view has been taken of the construction of the exemption clause of Article 5. The point which I am now considering did not arise

in those oases and was certainly not decided. The question which arose in those cases was whether by virtue of the exemption clause of Article 5 the document which in addition to sale of goods recorded other transactions was exempt or not and the decision was in the negative. In the Madras case along with an agreement of sale there was an arbitration clause and the question was whether covenant relating to arbitration should be treated as an independent agreement and charged with duty or not. The question in the Allahabad case was whether a document containing a mortgage and a bond and also possibly containing an agreement of sale which was assumed for the case and not found was exempt from duty and the answer was the document was liable to duty as a bond or as a mortgage. The question did not arise and it was not decided that the agreement relating to sale of goods itself becomes liable to duty and ceases to be exempt from duty and cannot be enforced without payment of duty simply because it is incorporated or embodied in a separate or separable form in an instrument which contains other transactions also which transactions in their own merits are liable to duty under the schedule and proper duty has been paid about them.

91. It now falls to be considered whether the instrument in addition to being a mortgage of crops and a sale of crops is also a bond and if it be taken to be a bond, what is the duty payable with regard to it. According to Section 2(5), Stamp Act, 1899, bond includes:

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another.

92. Article 15 of Schedule 1, Stamp Act, in so far as it is material for the purpose of this case is as follows:

15. Bond (as defined by Section 2(5) not being a Debenture (No. 27) and not being otherwise provided for by this Act, or by the Court-fees Act, 1870 - where the amount or value secured does not exceed Rs. 10: Two annas; where it exceeds Rs. 10 and does not exceed Rs. 50 : Four annas; where it exceeds Rs. 50 and does not exceed Rs. 100 : Eight annas; where it exceeds Rs. 100 and does not exceed Rs. 200: One Rupee : see Administration Bond : (No. 2), Bottomry Bond : (No. 16), Customs Bond : (No. 26), Indemnity Bond : (No. 34), Respondentia Bond : (No. 36), Security Bond : (No. 57).

93. Prima facie the instrument satisfies the conditions laid down in Clauses (b) and (c) of Section 2(5), Stamp Act. The instrument is attested by witnesses; Moti under the instrument obliges himself to pay money to sugar factory. No doubt, this obligation is not to pay a fixed sum but to pay only such a sum, if any, which

may be found due on accounting and possibly as the expression "bond" is understood in English law a question may have arisen whether an obligation to pay a sum of money not fixed, comes within the purview of a bond. But it has been assumed at the Bar during the argument on both sides that for the purpose of the case we have to take the definition of the bond as it is given in the Stamp Act and the obligation to pay money thereunder in order to make a transaction a bond need not be fixed and specified. Even if there be any doubt about clause (b) of Section 2, Clause (c) clearly applies because by this clause Moti obliges himself to deliver agricultural produce to sugar factory.

94. At the same time, it is manifest that when Moti obliges himself to pay money or obliges himself to deliver agricultural produce to the sugar factory he does so - the former in order to satisfy a condition of the mortgage and in order to pay off the mortgage money and the latter in order to satisfy a condition of sale and in order to perform his contract of sale and it seems unnatural to wrest the obligation to pay money and the obligation to deliver sugarcane crop from their natural settings as a part of mortgage or sale transaction and incidental thereto and to dress them up as independent covenants as characteristics of the bond. The transaction entered into by Moti in form and substance was a mortgage and a sale and it would be unnatural and using forced language to describe it as a bond.

95. There can be and there are two views about the matter. One view is that a document embodying a sale of a crop or mortgage of a crop becomes a bond if it is attested by witnesses. The attestation is a necessary characteristic of the bond, but it is not an essential characteristic of a document incorporating mortgage of crop or sale of crop as the validity of these transactions does not depend upon the attestation of the document and they can be carried out by documents which are not attested. And the bond is the basis of transaction over which is superimposed a transaction of mortgage or sale and in such a case the document shares and retains the character of a bond along with the characteristics of mortgage or sale respectively. The other view is that the obligation to pay money and the obligation to deliver crops is incidental to and is a necessary part of the mortgage of crop or of the sale of crop respectively and in a transaction of mortgage of crop or sale of crop the element of bond, if there be any, is entirely submerged in the transaction of sale or mortgage and it is unnatural language to describe a transaction of a sale or mortgage of a crop as a bond simply because there happens to be an attestation of the document and in such a case attestation may well be regarded as surplusage. The obligation to pay money and to deliver crops are exclusively referable to sale and mortgage transactions and they should not be treated as independent covenants furnishing the basis of a bond. There is high judicial authority in support of either of these contentions. In *In re Ralli Bros* ('06) 8 Bom.L.R. 234 a Full Bench of the Bombay High Court, after expressing a doubt whether the real intention of the Legislature was being carried out by interpreting the transaction in the manner, in which it did, has held that a document recording a sale of goods if attested becomes a

bond and ceases to be exempt from duty and becomes liable to pay duty of a bond.

96. The judgment of the Court which was delivered by Sir Lawrence Jenkins contains no discussion of law and is based upon a previous authority of the Bombay High Court to which the Court itself held bound. In *In re Reference under Stamp Act, Section 49* ('87) 10 Mad. 158 (F.B.) and in *Venku Ramchandraseth v. Sitaram Pandurang* ('05) 29 Bom. 82 the Full Benches of the Madras High Court and Bombay High Court have held that a document resembling a promissory note, if attested, becomes a bond. On the other hand in *Reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue*, a Full Bench of this Court has held that a document of sale of goods, though attested, was not a bond. The view expressed by the Full Bench is that the obligation to deliver crop contained in the said document was solely referable to the sale transaction and could not be made out a condition of a bond. The document in that case was in fact attested as I have verified it with reference to the paper book in High Court and the argument of the counsel in that case proceeded upon the assumption that the document contained the necessary ingredients of a bond including attestation and delivery of crop. It must therefore be taken that in the view of the Full Bench the attestation of the document was a mere surplusage and could be disregarded.

97. In *In the matter of Gajraj Singh* ('87) 9 All. 585 a Full Bench of this Court has held that a document containing a mortgage of crops, with a further obligation of delivery of crops in payment of the mortgage money, may be treated as a bond. This case was decided at a time when the present Article 41, Stamp Act, dealing with mortgage of crops was not in the statute and the mortgage of crops was included under the description of ordinary mortgage and the duty with regard to mortgage and bond was the same and the question was not of any practical importance for the purpose of that case whether the transaction be regarded as a mortgage or as a bond.

98. In *Reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue*, there were three documents under consideration. The second may be disregarded for the purpose of this judgment as it was not attested. The third document embodied a sale of crops which the Full Bench held not to be a bond and which I have discussed above. The first document was a mortgage of crop with a covenant of delivery of crops similar to the document in *In the matter of Gajraj Singh* ('87) 9 All. 585 and following the said case, a Full Bench of this Court has held the first document to be a bond. It is true that at this time Article 41, Stamp Act, was in the statute, but combined with this mortgage of crops there was no clear agreement of sale of crops and no question arose nor was it discussed whether the covenant relating to delivery of crops could or should be referred to the agreement of sale. It is true that for a different purpose the exemption clause of Article 5, Stamp Act, was relied on but the question whether the obligation to deliver crops when it is a part of the sale

transaction, can be separated and treated as a condition of bond also and the further question whether a document which records a combined mortgage and sale transaction can or should also be treated as a bond, did not arise and was not considered in the case. The two Allahabad cases therefore in *In the matter of Gajraj Singh* ("87) 9 All. 585 and *Reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue*, cannot be regarded as direct authorities for the proposition that "where the obligation as to payment of money and the delivery of agricultural produce can both be referred, to mortgage and sale respectively, combined in one document such a document also should not be treated as one of mortgage and sale alone and should be treated as bond also.

99. It will thus appear that there is one clear authority in favour of the view that a sale of goods, if attested, may be treated as a bond, see *In re Ralli Bros* ("06) 8 Bom.L.R. 234 and there is one clear authority in favour of the view that a sale of goods, even if attested, remains a sale and should not be treated as a bond : see *Reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue*, (third document in that case). There are two cases which lay down that a mortgage of crops in which there is an additional condition for delivery of crops not incidental to a mortgage and without references to a sale may be treated as a bond and there is no direct authority, one way or the other, in which a mortgage of crops simpliciter, if attested but without a covenant as to delivery of crops has ever been treated as a bond or in which a combined mortgage and sale transaction, in which obligations both as to payment of money and as to the delivery of crops could properly be referred to mortgage and sale respectively, was additionally held to be bond also.

100. In this state of authorities and having regard to the importance of the question which arises in the case, I feel that I am at liberty to express my own opinion of the topic which is in favour of the view that the obligation to pay money and to deliver sugarcane crop undertaken by Moti by the instrument can and should be referred to the mortgage and sale of crop and as incidental thereto and the attestation of the instrument may be regarded as a surplusage. And in this view the instrument records only a mortgage and sale of crops and is not a bond within the purview of the Stamp Act and I hold accordingly. Assuming however that the instrument may be treated as partaking the characteristics of a bond also in addition to those of a mortgage and sale, this leads me to the question whether it is liable to any duty under Article 15 of Schedule 1, Stamp Act. Mulla and Pratt in their commentary on Stamp Act on Article 15 state as follows:

This article is a residuary article and applies to bonds which are not chargeable under Articles 2, 15, 26, 27, 34, 40, 41, 56 or Article 57 or not charged or exempted under Court-fees Act, 7 of 1870.

101. In *In re Reference from the Munsif, 4th Court, Habiganj In Re: Reference under Section 113 read with Order 46, Rule 1, Civil P.C.*, a Full Bench of the

Calcutta High Court has held:

A comparison of these articles shows that Article 15 is of a residuary character intended for bond which cannot be assigned to any other article of Stamp Act and is not provided for by the Court-fees Act.

102. In Reference under the Stamp Act In Re: Reference by Junior Secretary Board of Revenue, a Full Bench of this Court has held:

If it be conceded that the instrument is an agreement for or relating to sale of merchandise or goods exclusively, even though it may also fall within the category of bonds, Article 15 does not apply as Article 5, Schedule 1, expressly provides for an instrument of this kind. It seems to us that Article 15 is a residuary article applying only to such bonds as are not separately provided for in other articles.

103. It is contended that these cases do not lay down correct law; that in deciding these cases the learned Judges did not take into consideration Section 6, Stamp Act, which lays down that if an instrument is so framed as to fall within two or more of the descriptions in Schedule 1, where the duties chargeable are different, it shall be chargeable only with the highest of such duties and it is further contended that the learned Judges did not take into consideration the last clause in Article 15 of Schedule 1, Stamp Act, which is, see Administration Bond (No. 2), Bottomry Bond (No. 16), Customs Bond (No. 26), Indemnity Bond (No. 34), Respondentia Bond (No. 56), Security Bond (No. 57), and it is contended that the list given above as to the bonds is exhaustive and Article 15 may be residuary with reference to bonds, but it is not residuary with reference to the entire schedule. In my opinion Section 6 only applies when an instrument falls within two or more descriptions in Schedule 1. But the question whether a particular instrument falls under a particular article of Schedule 1 cannot be determined with reference to Section 6. The argument here is that Article 15 is a residuary article and cannot apply at all to a bond which is in the nature of a mortgage of a crop or which is in the nature of a sale of a crop and the mortgage and sale of a crop are matters provided by Articles 5 and 41 of Schedule 1, Stamp Act, and Article 15 of Schedule 1 being a residuary article does not apply at all. I am further of opinion that the various bonds mentioned under Article 15 after the word "see" are merely illustrative and not exhaustive and the fact that Section 6 and illustrations were not discussed in those judgments does not affect in any way the authority of those cases.

104. Apart from authority on principle also, it seems to me to be unsound to apply an article dealing with bonds generally to a case where the bond has been merged in a mortgage or in a sale of goods and where the transaction both in form and in substance is a transaction of a mortgage and sale of crops and as such is provided for by separate and specific articles of the schedules of the Stamp Act. Both on principle and authority therefore the instrument, if it be regarded as a bond, is not liable to duty under Article 15 of Schedule 1, Stamp

Act. Assuming that the instrument is a bond and further that it comes within the ambit of Article 15, Stamp Act, is it liable to any lesser duty by reason of the fact that the executant is an agriculturist? Section 39, U.P. Agriculturists' Relief Act of 1934, is as follows:

39. (1) Every loan given after the date on which this Act cranes into force shall be evidenced by a written document of which a copy shall be given to the debtor,

(2) In the case of unsecured loans an entry shall be made in every such document specifying the date by which repayment must be made in order to earn the benefit of Section 29 and the rate of interest which shall prevail if repayment is made by such" date.

(3) No interest shall accrue on any loan until a copy of a written document prepared according to the provisions of Sub-sections (1) and (2) has been supplied to the debtor as required by Sub-section (1).

(4) Notwithstanding anything in the Stamp Act, 2 of 1899, no such written document as is referred to in Sub-section (1) shall require a stamp duty higher than that which would have been payable in respect thereof had it not contained the details mentioned in Sub-sections (1) and (2), and no copy supplied to the debtor as required by Sub-section (1) shall require any stamp duty.

105. Section 40 of the same Act is as follows:

40. (1) Notwithstanding anything contained in the Stamp Act, 2 of 1899, and the rules made under the Registration Act, 16 of 1908, the stamp duty and the registration and the copying fees on bonds of value or amount not exceeding Rs. 3000 executed by an agriculturist and registered under the Registration Act shall be as laid down in Schedule 5.

(2) If a bond is executed on a form printed under the authority of the Local Government, no copying fee shall he leviable for making a copy or a note of the bond in the books prescribed under the Registration Act, 16 of 1908.

106. On the plain language of the section the document which is entitled to the benefit of Schedule 5, Agriculturists' Relief Act, is a bond "of value or amount not exceeding Rs. 3000 executed by an agriculturist and registered under the Registration Act." The instrument not being registered on the face of it does not come within the purview of the section and further the instrument which is a combined mortgage and a sale of goods is not merely a bond as contemplated by Section 40, Agriculturists' Relief Act. Mr. Pathak contends that the intention of the Agriculturists' Relief Act was to grant relief to agriculturists. Section 39 of the Act enjoins that every loan given to the agriculturist shall be evidenced by a written document and it thereby casts a burden on the agriculturist to execute the document and pay duty upon it for a loan which a non-agriculturist can bring about without executing a document and without paying a duty. He therefore contends that as it was the obvious intention of the Act to grant relief to agriculturists it must be presumed that the Legislature intended to grant them

relief with regard to duty of documents which they were compelled to execute. Therefore Section 40, Agriculturists' Relief Act, must be so interpreted as to permit agriculturists to get the benefit of Schedule 5 both with regard to documents which are executed but not registered and with regard to documents which are both executed and registered. He further contends that "and" in material places in Section 40, Agriculturists' Relief Act, should be read as "or".

107. Dr. Asthana, on the other hand, contends that whatever concession the Legislature intended to show to agriculturists for execution of their documents u/s 39 it has been provided by Clause (4) of Section 39, and Section 40, according to him, deals with a separate matter, namely registered documents. According to him the intention of the Legislature was that all loans taken by agriculturists should be evidenced by a document and with regard to this such relief as the Legislature thought fit to grant them in the matter of payment of stamp duty was granted by Clause (4), but the Legislature held out an Inducement to agriculturists to get their documents which they had executed u/s 39 registered also and in order to encourage registration certain privileges were granted u/s 40 which provided a lesser duty and a lesser registration fee but this privilege was only available when the agriculturists complied with both conditions and the registration of the document, and could not be availed of by simply complying with one condition only, namely the execution of the document. The principles under which it is open to a Court to modify or vary the plain terms of a modern statute are well settled and have often been discussed and explained in text books and by eminent Judges. The "general rule", said Willes J., in *Christopherson v. Lotinga* (1864) 33 L.J.C.P. 121 at p. 123, is stated by Lord Weneleydale in these terms, viz.,

to adhere to the ordinary meaning of the words used, and to grammatical construction, unless that is at variance with the intention of the Legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further.

108. "I certainly," continued Willes J.,

subscribe to every word of the rule, except the word "absurdity" unless that be considered as used there in the same sense as "repugnance" that is to say, something which would be so absurd with reference to the other words of the statute as to amount to a repugnance.

109. And the same rule is thus expressed by Sir George Jessel, M.R. in *Nuth or North v. Tamplin* (1881) 8 Q.B.D. 247 at page 253:

Any one who contends that a section of an Act of Parliament is not to be read literally must be able to show one of two things either that there is some other section which cuts down its meaning, or else that the section itself (if not literally) is repugnant to the general purview of this Act.

110. It may be permissible to depart from plain meaning of the statute and here opinions differ if by following plain meaning is produced some manifest absurdity or futility, palpable injustice or absurd inconvenience or anomaly, but Judges are not permitted to mould statute according to their own conception of justice or expediency. "No doubt," said Willes J., in *Abel v. Lee* (1871) L.R. 6 C.P. 365

the general rule is that the language of an Act is to be read according to its ordinary grammatical construction, unless so reading it would entail some absurdity, repugnancy or injustice.... But I utterly repudiate the notion that it is competent to a Judge to modify the language of an Act in order to bring it in accordance with his view of what is right or reasonable.

120. And a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made and Judges are not permitted to wrest the language of the statute to avoid an obvious mischief. "No case can be found to authorize any Court to alter a word so as to produce a *causus omissus*," said Lord Halsbury in *Mersey Docks v. Henderson* (1888) 13 A.C. 595 at p. 602. And in *Crawford v. Spooner* (1846) 6 Moo P.C. 1 at p. 9, the Judicial Committee said:

We cannot aid the Legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there.

121. In enjoining agriculturists to execute documents to evidence loans as is done by Section 39, *Agriculturists' Relief Act*, and in further enacting that if documents are executed and registered, a lesser stamp duty and registration fee will be charged, as is done by Section 40 of the Act, is there involved any manifest repugnancy, absurdity or injustice with reference to the two sections of the statute mentioned above or with reference to the general scheme and other provisions of the Act? I can see none. It may be that the object of the *Agriculturists' Relief Act* is to make provisions for the relief of agriculturists from indebtedness and it may be that in compelling agriculturists to execute documents for their loans in order to save them from dishonest claims of money-lenders, the statute imposes a hardship upon them by requiring them to pay stamp duty for loan transactions when non-agriculturists are allowed to carry out loan transactions without any document, but it was for the Legislature to relieve them against hardship, if there was any. The benefit conferred by Section 40, *Agriculturists' Relief Act*, is on plain language intended for those documents which are executed and registered and the object apparently seems to be to encourage registration by charging less fee for stamp and registration. There seems to be no manifest repugnancy or absurdity or injustice either with reference to the general scheme of the Act or with reference to Sections 39 and 40 in enacting, that agriculturists should be compelled to execute the document and yet they should be relieved from payment of duty only if and when they register the document. And, even if there be any hardship in the matter, it is one for the legislation and not for judicial interpretation. It is said that the intention of the Legislature was to give relief with regard to stamp duty both when the document was simply executed and not registered as also when the document

was executed and registered, and we must so construe the section as to bring out this intention by reading "and" as equivalent to "or" in Section 40 at all material places. In the first place if "and" was to be substituted by "or" in the section as Mr. Pathak contends the change will not make good sense, and in my view the Legislature could not have properly intended to use "and" for "or" in the section. Secondly, intention of the Legislature, as was observed by Lord Watson in *Salomon v. Salomon* (1897) 1897 A.C. 22 at page 38,

is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication.

122. In *Cox v. Hakes* (1890) 15 A.C. 506 at p. 528 Lord Herschell in his speech observed as follows:

It is not easy to exaggerate the magnitude of this change; nevertheless, it must be admitted that, if the language of the Legislature, interpreted according to the recognized canons of construction, involves this result, your Lordships must frankly yield to it, even if you should be satisfied that it was not in the contemplation of the Legislature.

123. Applying the above principles to the case I hold that Section 40, *Agriculturists' Relief Act*, does not govern the instrument because it was not registered and in this view of the matter it is not necessary to express any opinion upon the other question raised by the learned Advocate-General as to whether Section 40, *Agriculturists' Relief Act*, applies to bond simpliciter, or also applies to a case of bond which arises on the basis of mortgage of crop and sale of goods, in other words, a combined document dealing with several matters and containing an element of bond also. It remains now to determine the duty which the instrument should pay and here also arises a minor question as to what was the maximum sum secured by the mortgage of crops. Clause (5) of the Instrument is as follows:

That whenever a necessity will dictate, I, the executant, shall in addition to the zari peshgi aforesaid, continue to take, under receipts, further sums from the said creditor, the aggregate amount whereof will come to Rs. 100 and all the sugarcane shall stand hypothecated for the entire mutaleba.

124. On one side it is contended that the true construction of the clause is that the executant was entitled to borrow a further sum of Rs. 100 in addition to Rs. 85 already received. Thus in all the total of the entire borrowing which the executant was entitled to make was Rs. 135, on the other side it is contended that in addition to Rs. 35 already borrowed, the executant was entitled to borrow a further sum of money upto a limit of Rs. 100 including Rs. 35 already received.

It is possible to construe the clause "the aggregate amount whereof will come to Rs. 100" both ways as the aggregate of total borrowings including the advance of Rs. 35 and also as the aggregate of further borrowings leaving out the previous advance of Rs. 35. Some of my brothers who are sitting with me on the Bench wish to read it in one way and others in the other way. In the Court below no point was raised about it and there is no point about it in the statement of the case which has been sent to us and in the two questions which have been submitted for our consideration. In the view which I have taken of the case, it is immaterial whether the sum secured was Rs. 100 or Rs. 135 because in either case the duty will be the same. But as I am asked to express my opinion on this matter also I prefer the view which holds that the maximum of Rs. 100 governs the total borrowing and the sum secured by the instrument was Rs. 100 only and not Rs. 135. The instrument being covered by Article 41 and by Article 5 of the exemption clause and not being a bond within the meaning of Section 2(5) and not being liable to duty under Article 15, Stamp Act, 1899, it was liable to duty of two annas only under Article 41, Stamp Act, and which is the stamp it bears and, as such, it is duly and sufficiently stamped, and this is my answer to the reference.

125. The answer to the reference is that the instrument in question is sufficiently stamped.