

## APPELLATE CIVIL

1878  
May 27.

*Before Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Spankie.*

AFZAL-UN-NISSA (PLAINTIFF) v. TEJ BAN (DEFENDANT).\*

*Improper reception in evidence of unstamped document—Irregularity not affecting the merits of the case—Appeal—Act VIII of 1859 (Civil Procedure Code), s. 350.*

Where a Court of first instance, treating an unstamped promissory note, the after stamping of which was inadmissible, as a bond, received such instrument in evidence, on payment of the stamp-duty chargeable on it as a bond and of the penalty, held that the reception of such instrument by such Court, being an irregularity not affecting the merits of the case, was no ground for reversing the decree of such Court when the same was appealed from (1).

THIS was a suit for certain money due on a promissory note, dated the 1st May, 1874. This instrument, although chargeable, under Act XVIII of 1869, with the stamp duty of fifteen annas, was unstamped. The Court of first instance, treating the instrument as a bond, allowed the plaintiff, in the exercise of the powers given to it by s. 20 of Act XVIII of 1869, to pay the stamp duty chargeable on the instrument as a bond and the penalty, and received the instrument in evidence, and gave the plaintiff a decree. On appeal by the defendant the lower appellate Court reversed the decree of the Court of first instance and dismissed the suit, on the ground that after stamping of the instrument was inadmissible and it could not be received in evidence.

The plaintiff appealed to the High Court, contending, amongst other matters, that, with reference to s. 350 of Act VIII of 1859, the lower appellate Court had erred in reversing the decree of the Court of first instance on account of an irregularity not affecting the merits of the case or the jurisdiction of the Court.

Munshi *Hanuman Prasad* and Pandit *Bishambhar Nath*, for the appellants.

\* Second Appeal, No. 1244 of 1877, from a decree of W. Lane, Esq., Judge of Moradabad, dated the 18th September, 1877, reversing a decree of Muhammad Wajih-ul-la Khan, Subordinate Judge of Moradabad, dated the 20th April, 1877.

(1) As to whether the reception in evidence by a Court of first instance of an unstamped document is ground for interference with the decree of such Court on appeal, see *Hur Chunder Ghose v. Wooma Soomtarce Dessee*, 23 W. R. 170; *Srinath Saha v. Saroda Gobindo Chowdhry*, 5 B. L. R. Ap. 10; *Lalji Singh*

*v. Syad Akram Ser*, 3 B. L. R., A. C., 235, S. C., 12 W. R. 47; *Currie v. S. V. Mutu Ramen Chetty*, 3 B. L. R., A. C., 126, S. C., 11 W. R. 520; *Curness v. Sheochurn Sahoo* W. R., 1864, p. 184; *Crawley v. Malins*, 1 Agra H. C. Rep. 63; *Adinarayana Setti v. Munchin*, 3 Mad. H. C. Rep. 297.

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AFZAL-UN-  
NISSA  
v.  
TEJ BAN.

Mr. *Howard* and *Shah Asad Ali*, for the respondent.

The judgment of the Court was delivered by

TURNER, O. C. J.—The document could not be received in evidence on payment of any penalty (1). It should not then have been received in evidence, but it having been admitted by the Court of first instance, the lower appellate Court was not justified in reversing the decree of the Court of first instance and dismissing the suit, for the irregularity did not affect the merits. The decree of the lower appellate Court cannot be supported on the ground on which it proceeds. The appeal to the Judge must then be tried on the merits, and if, as the appellant alleges, and as she proved to the satisfaction of the Court of first instance, the note was given to induce the appellant to consent to the mutation of names, the consideration is sufficient, and the appellant will be entitled to a decree. The costs of this appeal will abide and follow the result.

*Cause remanded.*

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June 14.

## APPELLATE CIVIL.

*Before Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Pearson.*  
TETLEY (JUDGMENT-DEBTOR) v. JAI SHANKAR AND ANOTHER (DECREE-HOLDERS).\*

*Interlocutory Order—Appeal to Her Majesty in Council—Act VI of 1874—Act X of 1877 (Civil Procedure Code)—Letters Patent, cl. 31.*

*Held* that the High Court has not any power, under Act X of 1877, or cl. 31 of the Letters Patent, to grant leave to appeal to Her Majesty in Council from an order of the Court remanding a suit for retrial.

The provisions of cl. 31 of the Letters Patent are repealed by the Code and Act VI of 1874 which preceded it.

THIS was an application to a Division Court of the High Court for leave to appeal to Her Majesty in Council against an order of such Division Court dated the 23rd January, 1878. This was an order, under s. 562 of Act X of 1877, remanding a case to the Court of first instance for a new trial. The order was made under these circumstances: The Court of first instance dismissed an

\* Application No. 6 of 1878, for leave to appeal to Her Majesty in Council.

(1) See s. 28 of Act XVIII of 1869 and *Nandan Misser v. Chatterbati*, 13 B. L. R. Ap 33.