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promissory note or other document of that kind, and as such liable to the duty imposed by the Act, is not duly stamped, it appears to me that the person subject to penalty is the person who makes it, and not the person in whose favour it is made." That was a prosecution under section 29 of the Stamp Act then in force, namely, Act No. XVIII of 1869, which does not differ materially from section 61 of the present Act. It was there held that the person in whose favour a document not duly stamped is made, incurs the risk of being debarred from producing it in evidence, but does not render himself liable to penalties under the fourth chapter of the Act. It has been contended that in such cases a person who receives a document not duly stamped abets the commission of an offence under section 61; but, as was remarked in the case *Empress v. Janki* (1), "it is not abetment of the execution of an unstamped document to receive it, any more than acceptance of stolen property is abetment of theft." This case was followed in this Court in *Empress v. Gopal Das* (2). I think the view taken by the learned Sessions Judge is right. I quash the conviction of Nihal Chand for an offence under section 61 of Act No. I of 1879 and the sentence of fine imposed thereunder, and direct that the fine, or such portion of it as may have been paid, be refunded.

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June 6.

APPELLATE CIVIL.

Before Mr. Justice Blair.

FATEH CHAND AND OTHERS (PLAINTIFFS) v. MANSAB RAI (DEFENDANT).
Civil Procedure Code, section 53—Verification of plaint—Plaint verified when in an incomplete state—Amendment of plaint.

The substantial portion of a plaint, consisting of the statement of the claim of the plaintiffs and the prayer, was written upon two sheets of plain paper and verified by the plaintiffs. Subsequently to the affixing of the plaintiffs'

* Second Appeal No. 376 of 1897 from a decree of Rai Shankar Lal, Subordinate Judge of Saharanpur, dated the 3rd March 1897, reversing a decree of Munshi Shiva Sahai, Munsif of Kairana, dated the 26th February 1896.

(1) L. L. R., 7 Bom., 82.

(2) Weekly Notes, 1888, p. 145.

signatures a front sheet, consisting of a piece of stamped paper with the name of the Court and the names and addresses of the parties, was added, and the plaint thus composed filed in Court.

Held, that the verification was defective; but that the suit ought not to have been dismissed. The plaintiffs ought to have been allowed an opportunity of amending the plaint by making a proper verification.

THE material facts of this case, as stated in the judgment of the lower appellate Court, are as follows;—

“The plaint purports to have been verified by the plaintiff Fateh Chand at Kairana on the 16th July 1895, by the plaintiff Ranjit Singh at Gadhi Husenpur on the 13th July, and by Musammatt Shibbi, next friend of Somat Prasad, minor plaintiff, on the 11th July at Saharanpur. It was presented to the Court of the Munsif of Kairana on the 17th July 1895. It purports also to bear the signatures at another place, but it is not expressed when these signatures were affixed. The plaint consists of three leaves, and the signatures and verifications are contained on the last leaf, and the plaintiffs’ signatures are wanting on the first two leaves, though rule 424, clause (5), of the rules of the 4th April 1894, framed by the High Court, required the plaintiffs’ signatures on each leaf. The first leaf is the stamp paper used to denote the court fee. It was purchased at the Kairana tahsil on the 17th July 1895. The stamp paper contains the name of the Court and the names, description and place of abode of the parties. It should also have contained a substantial portion of the statement of the claim, according to the said rules, but it does not.”

The Subordinate Judge found:—“It is evident that the particulars stated on the first leaf, namely, the stamp paper, were not verified by the plaintiffs. I find that neither the verification nor the signatures of the plaintiffs apply to what is written on the first leaf, which was not in existence when they were apparently affixed. Musammatt Shibbi deposed that she affixed her mark on three papers, which may mean in two places on the plaint and on the vakalatnama, dated the 7th July 1895. There is nothing to show that the plaintiffs’ signatures

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were affixed on the 17th July 1895, or on dates different from those of the verifications. The verification had been affixed before the 17th July 1895."

On these findings the lower appellate Court came to the conclusion, with reference to the case of *Katesar Nath v. Aggyan* (1), that the plaint was void *ab initio* and incapable of amendment, and dismissed the plaintiffs' suit. The plaintiffs thereupon appealed to the High Court.

Pandit *Moti Lal*, for the appellants.

Maulvi *Abdul Majid*, for the respondent.

BLAIR, J.—The facts of this case fall within the ruling in two unreported cases of this Court. The one is the case *F. A. No. 269 of 1893*, (*Gangu Sahai v. Muhammad Ali Jan Khan*),*

* The judgment in this case was as follows:—

BANERJI and ARKMAN, JJ.—The suit out of which this appeal has arisen has been dismissed by the Subordinate Judge on the ground that the plaint filed on behalf of the plaintiffs was not properly signed and verified. What took place was this:—The plaint was drawn up on two sheets of plain paper, and it was signed and verified at the foot by the plaintiffs as required by section 51 of the Code of Civil Procedure: this was done by the plaintiffs at Bulandshahr. They sent the plaint to a pleader at Meerut for the purpose of its being filed in the Court there. The pleader instead of attaching to the plaint the stamp paper requisite for the court-fees payable on the plaint, as he should have done, took out the first sheet and transcribed the contents of it on the stamp paper. This was certainly a reprehensible proceeding on the part of the pleader; he should have known that the plaint to be filed in Court was the document which the plaintiffs had signed and verified, and not a document which consisted partly of matter which had been signed and verified, and partly of matter which had been written after signature and verification. The plaint in this case as filed was therefore defective, but we are of opinion that the Subordinate Judge should have returned it to the plaintiffs for amending it by signing and verifying it as it stood: he ought not to have dismissed the suit. It was the duty of the Court to return the plaint before settlement of issues, and the mere fact that issues were settled could not deprive the plaintiffs of the opportunity which they might otherwise have had and ought to have had of curing the defect which existed in the plaint.

We set aside the decree below and remand the case to the lower Court with the direction that it should readmit the suit under its original number in the register, and return the plaint to the plaintiffs for amending it by signing and verifying it according to law.

The parties will bear their own costs of this appeal.

decided on the 9th of December 1895, and the other is F. A. No. 149 of 1895 (*Munshi Fakir Chand v. Mahesh Das*),† decided on the 1st of April 1897. No reported cases have been cited to me which are at all on all fours with the matter at issue in the present appeal. I see no reason to differ from the conclusions of the Judges who decided those two unreported appeals, and I accordingly make the same order which they did. I set aside the decree below and remand the case to the lower Court with the direction that it should re-admit the suit under its original number in the register and return the plaint to the plaintiffs for amendment according to law. This order is made under section 562 of the Code of Civil Procedure. The Court of first instance will then proceed to decide the case on the merits.

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† The judgment in this case was as follows:—

BANERJI and AJEMAN, JJ.—The suit out of which this appeal has arisen has been dismissed by the lower Court on the ground that the plaint was not properly verified. The verification has been held to be defective for two reasons. First, that after the whole of the plaint as it was filed in Court had been prepared the plaintiff did not verify it, but what was done was this:—The plaint was written out on four sheets of foolscap paper, and at the end was signed and verified by the plaintiff; but the pleader who filed the plaint, instead of attaching to it the stamps required for the claim, took out the first two sheets and caused their contents to be copied on the stamp papers. The second ground on which the Subordinate Judge considered the plaint to be defective is that, although the plaintiff verified the whole of the statements contained in the plaint as true to his knowledge, it appeared as to some matters that he had no personal knowledge. As regards this second ground, the conclusion of the Subordinate Judge is erroneous. The plaint on the face of it was properly verified in accordance with the provisions of the law, and for the purposes of ascertaining whether the verification was a good verification in form, the fact whether it was true was wholly immaterial. As to the first ground, as we held in First Appeal No. 269 of 1893, which was a case on all fours with the present, the Subordinate Judge should not have dismissed the suit, but should have returned the plaint to the plaintiff in order that it might be properly verified.

We allow this appeal, and, setting aside the decree below, remand the case under section 562 of the Code of Civil Procedure, with directions to re-admit it under its original number on the register and dispose of it on the merits, after causing the plaint to be amended by being properly verified. Costs will abide the event.

Appeal decreed and cause remanded.