

discharge." This seems to be the real test to be applied in cases of this sort. The order of discharge itself showed that the Magistrate did not conceive himself to have finally disposed of the matter, and it contained in itself a direction (there was no such direction in *Safdar Husain's* case) that certain further proceedings should follow. It is possible, therefore, to regard the order of the 2nd of August, 1913, as a mere permission to the accused persons to leave the court and an intimation that their further attendance would not be required, while the case itself still continued and was not concluded until the final order of the 6th of August, 1903, was signed and delivered. The trying Magistrate would have been better advised to have adhered strictly to the procedure laid down by law; but it seems difficult to hold that the mere fact of an adjournment, one granted after all for the convenience of the complainant himself and never objected to by him, would distinguish this case from that of *Emperor v. Punamchand Hirachand* (1). We have, therefore, the authority of the Bombay ruling, as well as that of a single Judge of this Court, for holding that the proceedings under consideration were merely irregular and not without jurisdiction.

We decline to interfere: let the record be returned.

*Order confirmed.*

### FULL BENCH.

*Before Justice Sir George Knox, Mr. Justice Tudball and Mr. Justice Piggott.*  
STAMP REFERENCE BY THE BOARD OF REVENUE.

*Act No. II of 1899 (Indian Stamp Act), section 2, (15) and schedule I, article 45(c)—Stamp—Partition—"Final order for effecting a partition."*

*Held* that the words "final order" in section 2, clause (15) and article 45 (c) of schedule I to the Indian Stamp Act, 1899, refer to the final order of the lowest court of original jurisdiction empowered to give an order for effecting a partition at the time it is passed.

THIS was a reference made by the Board of Revenue for the United Provinces under section 57 (1) of the Indian Stamp Act, 1899.

The terms of the reference were as follows:—

"The question for determination is the meaning of the words 'final order' in section 2 (15) and article 45 (c) of schedule I of the Stamp Act (II of 1899)."

Civil Miscellaneous No. 520 of 1913.

(1) (1906) 8 Bom. L. R., 847.

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The Board think that they refer to the final order of the lowest court of original jurisdiction empowered to give an order for effecting a partition, at the time it is passed, and not to the order of the highest court of appeal or to the order of the original court when the time for the appeal has elapsed and no appeal has been filed. This view has advantages from an administrative point of view, as, if the 'final order' to be stamped with the stamp required for an instrument of partition is that of the highest court of appeal, it will be necessary to keep the record out of the record-room for a long period without any stamping being done.

"Difficulty will arise if (a) the appellate court quashes the partition or decreases the value of the plaintiff's share; (b) or increases the value of the plaintiff's share. In the one case the plaintiff will apparently be entitled to a refund of the stamp duty he has paid or to a refund of the proportionate share of that duty, and in the other case the decree of the appellate court should apparently be written on a stamp representing the balance between the amount of stamp duty actually paid and that which might have been levied had the original court passed the decree issued by the appellate court."

The officiating Government Advocate (Mr. W. Wallach) submitted that 'final order' in section 2 (15) and article 45 (c), of the first schedule to the Indian Stamp Act was an order which finally defined the shares so far as the original court was concerned until it was set aside in appeal. "Final order" was distinguished from an "Interlocutory order." It was the final order of the original court notwithstanding the fact that it might eventually be set aside or varied in appeal. Section 2 (15) of the Stamp Act did not say "final decree" but "final order." Section 54 and order XX, rule 18, of the Code of Civil Procedure referred to partition decrees; and the "preliminary decree" mentioned in section 54 of the Code was the "final order for effecting partition passed by any Civil Court" within the meaning of section 2 (15) of the Stamp Act. It was the preliminary decree passed by any original civil court in a partition case or the order for effecting a partition passed by any original revenue court that required to be stamped. If in appeal the separated share was increased, the order of the appellate court would be stamped with stamp payable on the amount of the increased share; if it was diminished the order of the court will be on un-stamped paper and a refund would be allowed of the amount payable on the value of the portion of the share cut off. The following cases were referred to:—*Jotindra Mohan Tagore v. Bejoy Chand Mahatap* (1); *Reference by Board of Revenue* (2) and *Balaram v. Ramkrishna* (3).

(1) (1904) I. L. R., 32 Calc., 483. (2) (1880) I. L. R., 2 All., 664.

(3) (1905) I. L. R., 29 Bom., 366.

KNOX, TUDBALL and PIGGOTT, JJ. :—After hearing the learned Government Advocate we agree with the Board of Revenue, which has made this reference, that the words “final order” in section 2, clause (15) and article 45, clause (c) of schedule I of the Stamp Act, No. II of 1899, refer to the final order of the lowest court of original jurisdiction empowered to give an order for effecting a partition at the time it is passed. Let this be the answer to the reference made by the Board of Revenue.

1914

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STAMP  
REFERENCE  
BY THE  
BOARD OF  
REVENUE.

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### APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

1914  
January. 17.

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CHETAN DAS (DEFENDANT) v. GOBIND SARAN (PLAINTIFF) AND DAN KUNWAR AND OTHERS (DEPENDANTS.)\*

*Act No. IV of 1882 (Transfer of Property Act), section 84—Mortgage—Prior and puisne incumbrancers—Tender of amount of prior mortgage by puisne incumbrancer—Offer by letter.*

*Held that an offer by letter of the amount due on a mortgage is not a good tender within the meaning of section 84 of the Transfer of Property Act. It is necessary that the money should be actually produced unless it can be shown that the person entitled to receive the money has waived this condition. Kamaya Naitik v. Devapa Rudra Naitik (1) referred to.*

THIS was a suit on a bond executed in the year 1899. The principal defendant, Chetan Das, was a puisne mortgagee who held a mortgage of the year 1903. Shortly after the execution of this mortgage Chetan Das had deposited in court a sum of money to clear off the incumbrance of 1899, and in this suit he pleaded that payment in bar of the plaintiff's claim. It was found, however, that the actual amount deposited, which the plaintiff had refused to accept, was less than the sum due under the mortgage. But the defendant further relied upon a letter in which he had offered to pay to the plaintiff a sum which was in fact in excess of what was due. The court of first instance gave the plaintiff a decree, but not for the whole amount claimed. The plaintiff appealed and the decree was modified in his favour by the lower

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\* Second Appeal No. 86 of 1913 from a decree of W. D. Burkitt, District Judge of Saharanpur, dated the 3rd of February, 1912, modifying a decree of Laddi Prasad, Additional Subordinate Judge of Saharanpur, dated the 24th of July 1911.