

1925

SHAGWATI  
DAYAL  
P.  
DHAN  
KUNWAR.

We are therefore of opinion that this matter is not appealable to His Majesty in Council and this application must be dismissed with costs.

*Application dismissed.*

## REVISIONAL CIVIL.

Before Mr. Justice Daniels.

1926  
January, 5.

CHOTEY LAL (PLAINTIFF) v. GIRRAJ KISHORE AND ANOTHER (DEFENDANTS).\*

Act No. II of 1899 (Indian Stamp Act), section 40—Hundi—Stamp—Hundi bearing a one anna stamp which has not been cancelled.

A *hundi* which is chargeable with a duty of one anna is not receivable in evidence if the stamp which it bears has not been cancelled, nor can the provisions of section 40 of the Indian Stamp Act, 1899, be called in aid to cure the defect. *Girdhari Das v. Jagan Nath* (1) distinguished.

THIS was an application in revision against a decree of a Court of Small Causes in a suit based upon a *hundi*. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Dr. N. C. Vaish, for the applicant.

Munshi Narain Prasad Ashthana, for the opposite parties.

DANIELS, J. :—The view taken by the court below in this case is correct. The plaintiff sued on a *hundi* bearing a one-anna stamp which was not cancelled. On the case coming before the Judge of the Small Cause Court he held quite rightly that the *hundi* was not receivable in evidence under the provisions of the Stamp Act and he impounded it and sent it to the Collector. The Collector imposed a penalty and

\* Civil Revision No. 142 of 1925.  
(1) (1880) I.L.R., 3 All., 115.

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improperly endorsed the document as sufficiently stamped, presumably purporting to act under section 40 of the Act. Section 40 expressly excludes instruments chargeable with a duty of one anna. The Collector's certificate therefore was not a certificate given in accordance with the provisions of the section, and the conclusive presumption laid down in subsection (2) does not apply to it. I have been pressed with the ruling in *Girdhari Das v. Jagan Nath* (1) but that was a case in which the document was voluntarily brought to the Collector to have the stamp duty appraised under a provision which corresponds to section 31 of the present Stamp Act. The provisions applicable are not identical with those of section 40. It has also been urged that under section 120 of the Negotiable Instruments Act it was not open to the opposite party to contest the validity of the deed, but the condition precedent to the application of section 120 is that there must be a properly stamped bill of exchange before the court, at which the court is entitled to look. An unstamped document, unless it is admissible under some special provision of law, is mere waste paper for the purpose of judicial proceedings. The third plea raised is that the plaintiff ought to have been allowed to sue for the debt independently of the *hundi*, but in this case his cause of action as set out in the plaint was based on the *hundi* and on that alone. I therefore dismiss this application with costs.

*Application dismissed.*

(1) (1880) I.L.R., 3 All., 115.