

the character of persons before the court. The High Court as the Supreme Court of revision must be deemed to have power to see that courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it. SHADI LAL, C. J., in the case of *Mohammad Qasam v. Anwar Khan* (1) recognized that under section 561A there is an inherent power of the High Court to delete objectionable remarks against witnesses or accused persons. Such jurisdiction, however, can only be exercised when there is no foundation whatsoever for the remark objected to and not where it is a matter of inference from evidence.

[Here His Lordship referred to the passage in the judgement which was sought to be expunged and held that there was no evidence to justify the language employed in the judgement.]

I accordingly order that the words which are objected to should be expunged from the judgement of the Sessions Judge. The other prayer asked for in the application is not granted.

## APPELLATE CIVIL.

*Before Mr. Justice Dalal and Mr. Justice Pullan.*

THE PUNJAB NATIONAL BANK (PLAINTIFF) v. TAJAMMUL HUSAIN, BISHESHAR NATH AND OTHERS (DEFENDANTS).\*

1926  
October, 19.

*Act No. XXVI of 1881 (Negotiable Instruments Act), sections 27 and 82—Hundi—Renewal of hundi after acceptance—Liability of acceptor on first bill.*

On the 2nd of November, 1921, two hundis were drawn by Tajammul Husain, Bisheshar Nath, in favour of the Punjab National Bank, the drawees being the firm of Moti Lal, Bisheshar Nath of Calcutta, by which they were accepted.

\* First Appeal No. 23 of 1924, from a decree of Syed Itikhar Husain, First Subordinate Judge of Cawnpore, dated the 21st of September, 1923.

(1) (1926) A.I.R. (Lahore), 382.

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On the 4th of February, 1922, these hundis were renewed by the same drawers, but were not accepted by the drawees.

*Held*, that this renewal did not absolve the drawees from their liability on the original hundis. *Sheikh Akbar v. Sheikh Khan* (1), *Sirdar Kuar v. Chandrawati* (2), *Dargavarapu Sarrapu v. Rampratapu* (3) and *David Torrance v. The Bank of British North America* (4), referred to.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Dr. *Kailas Nath Katju*, for the appellant.

Mr. *Nihal Chand* and *Munshi Sarkar Bahadur Johri*, for the respondents.

DALAL and PULLAN, J.J. : The Punjab National Bank has appealed from the dismissal of its suit for money on foot of two hundis, dated the 2nd of November, 1921. The hundis were drawn by the firm of Tajammul Husain, Bishesar Nath, and the drawee was the firm of Moti Lal, Bishesar Nath at Calcutta. These hundis were duly accepted by the firm of Moti Lal, Bishesar Nath. The question of acceptance has already been dealt with by us in our judgement in First Appeal No. 524 of 1923 delivered today. We hold acceptance to have been made by a person duly authorized by the firm as required by section 27 of the Negotiable Instruments Act. These hundis were renewed on the 4th of February, 1922, by the same drawer, but were not accepted by the firm of Moti Lal, Bishesar Nath on presentation. The learned Judge of the lower court held that the renewal of the 4th of February, 1922, was a full discharge of the two prior hundis and that therefore the firm of Moti Lal, Bishesar Nath was not liable to make payment either on the former two hundis of the 2nd of November,

(1) (1881) L.L.R., 7 Calc., 256.

(2) (1882) L.L.R., 4 All., 330.

(3) (1901) L.L.R., 25 Mad., 580.

(4) (1873) L.R., 5 App. Cas. (P.C.), 216.

1921, or on the subsequent hundis of the 4th of February, 1922.

The learned Judge relied on a ruling of this Court in the case of *Sirdar Kuar v. Chandrawati* (1). In our opinion the facts in that case were not similar to those of the present case. The principle applicable to a case like the present is one laid down in the case of *Sheikh Akbar v. Sheikh Khan* (2) :—

“ When a cause of action for money is once complete in itself and the debtor then gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may always as a rule sue for the original consideration, provided that he has not endorsed or lost or parted with the bill or note under such circumstances as to make the debtor liable upon it to some third person.”

There has been no such endorsement in the present case, and the principle of the above rule, which was followed by the Madras High Court in the case of *Dargavarapu Sarrapu v. Rampratapu* (3), would apply. If we refer to the relevant section of the Negotiable Instruments Act, the different ways in which the acceptor of a negotiable instrument may discharge his debt are given in section 82. The three ways are cancellation, release and payment. Admittedly there was no cancellation here, and there was no discharge because the new hundi was only a provisional discharge, which would have been complete if that hundi had been accepted. For the same reason there was no payment in due course. In a case of the Judicial Committee—*David Torrance v. The Bank of British North America* (4), it was held under similar circumstances that a fresh agreement between the drawer and the holder for value of a bill of exchange did not release the acceptor of the first bill from liability on foot of the first bill. The learned

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(2) (1881) I.L.R., 7 Cal., 256.

(3) (1901) I.L.R., 25 Mad., 580.

(4) (1873) L.R., 5 App. Cas. (P.C.), 246.

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counsel for the respondents drew our attention to the observations on renewal of a bill of exchange in "Halsbury's Laws of England," Vol. II, page 553, where it is said :—

"*Primâ facie* the giving of a new instrument in place of an existing one has the effect not of discharging the instrument then existing, but of being a conditional satisfaction of it, so that if the new instrument is duly paid at maturity the first instrument is discharged; but if not, then the dormant rights on the first instrument are revived."

This is the rule enunciated in *Sheikh Akbar's* case. Then follows the sentence on which the learned counsel for the respondents has relied :—“ Parties to the first instrument who do not assent to its renewal are in any case discharged.” Possibly this covers the case of sureties and not of principal debtors such as an acceptor of a hundi is. It is also to be noticed that Bisheshar Nath, one of the partners of the firm, was a party as partner in another firm to the drawing of the new contract and was cognizant of the renewal.

The ruling from the Privy Council Law Reports quoted above does not favour the view that the acceptor of a bill of exchange is discharged from his liability on the renewal of that bill to which he has not consented.

We are of opinion that the Bank can enforce the liability of the firm of Moti Lal, Bisheshar Nath on foot of the two bills of exchange of the 2nd of November, 1921.

In the result we set aside the decree of the lower court and decree the plaintiff's suit on the two hundis of the 2nd of November, 1921, with costs in all courts.

*Appeal decreed.*