gage debts. But in view of the consent of the plaintiff's counsel the amount should be deposited in court for payment of the previous encumbrances in the first instance.

(2) She is not entitled to any decree for damages, without proving the extent of the damages actually incurred by her.

(3) No decree for the specific performance of the original contract as it stood can be made in this case, but the plaintiff can compel the defendant to pay the amount in order to release her other properties from liability even though she may not yet have suffered actual loss.

REVISIONAL CIVIL

Before Mr. Justice Kendall

MEWA KUNWARI (PLAINTIFF) *v.* BOUREY AND ANOTHER (DEFENDANTS)*

1933
December, 20

Stamp Act (II of 1899), section 35—Instrument duly stamped when executed but one of the adhesive stamps missing afterwards—Promissory note bearing two half-anna stamps when executed but one of the stamps missing when tendered in evidence—Admissibility in evidence—Interpretation of statutes—Intention of legislature.

Where a promissory note bore two half-anna stamps at the time of execution, but when tendered in evidence it bore only one half-anna stamp and the other one was missing, it was *held* that on a right interpretation of section 35 of the Stamp Act the promissory note was admissible in evidence.

The word "is" in the phrase "unless such instrument is duly stamped" in section 35 of the Stamp Act should be liberally interpreted so as to include the words "has been", and this interpretation, which neither departed from the rules of grammar nor did any violence to the language of the section, was in consonance with the apparent intention of the legislature and prevented a hardship and absurdity which presumably could not have been intended.

*Civil Revision No. 472 of 1933.

SEWA KUNWARI v.

Mr. G. S. *Pathak*, for the applicant.

The opposite party was not represented.

KENDALL, J.:—This is a plaintiff's application for the revision of an order of the Judge of the small cause court of Cawnpore dismissing his suit, which was based on a promissory note which has been held to be inadmissible as not duly stamped. The promissory note when tendered in evidence bore one half-anna stamp, but the learned Judge has held that at the time of execution it bore two half-anna stamps and was therefore at that time duly stamped. But one of the stamps appears to have been lost or removed, with the result that when tendered in evidence it was no longer "duly stamped" and, as the Judge has pointed out, section 35 of the Indian Stamp Act, 1899, provides that "No instrument chargeable with duty shall be admitted in evidence . . . . . unless such instrument is duly stamped", and he has therefore held that the force of the word "is" in the section is such that he had no power to admit the document in evidence.

I have been asked by Mr. *Pathak* on behalf of the applicant to construe the section in a more liberal manner. The words "duly stamped" as defined in clause (11) of section 2 of the Act mean that the instrument "bears an adhesive or impressed stamp of not less than the proper amount, and that such stamp has been affixed or used in accordance with the law for the time being in force in British India." This definition does not in itself appear to help the applicant, but it has been pointed out that if the promissory note had been lost altogether it would have been open to the applicant to prove its contents, and it appears to be absurd that he should be put in a worse position because a part of the document only, and not the whole of it, has been lost. It may further be observed that if the promissory note had been executed without the affixation of a stamp at all, and the stamp had subsequently been affixed, it would have been.

according to the Judge's interpretation of the provisions of section 35 of the Act, admissible in evidence, although at the time of execution it had not been duly stamped. Yet section 17 of the Act provides that "All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution." The question is, therefore, whether the word "is" in section 35 may be so interpreted as to include the words "has been".

In chapter IX of his work on the Interpretation of Statutes, seventh edition, page 198, Sir Peter Maxwell remarks as follows: "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to . . . . . some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used." In my opinion the language of the Act is not absolutely intractable. It is not even necessary to depart from the rules of grammar or to do any violence to the language of the section. It is only necessary to interpret the word "is" in a liberal manner and in the manner that it appears to me the legislature must have intended. I think that in the circumstances the document ought to be held to be admissible and the plaintiff ought to have

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MEWA KUNWARI v. BOUREY

an opportunity of pursuing his claim. I therefore allow the application, set aside the decree and order of the trial court and direct that the suit be re-admitted on its original number and tried according to law. The opposite party has not opposed the present application and I direct therefore that the costs abide the result.

APPELLATE CIVIL

Before Mr. Justice Thom and Mr. Justice Kisch

1933
December, 21

ARJUN LAL AND OTHERS (DEFENDANTS) *v.* MAHARAJA OF JAIPUR (PLAINTIFF) AND MUNICIPAL BOARD, ALLAHABAD (DEFENDANT)*

Property—Ownership of land—Rights regarding air space above the land—Public street, vested in municipality, constructed over private land—Portico of house projecting over the street—Power of municipality to sanction such portico —Rights of owner of land regarding demolition of the portico—Question of degree—Prejudice or damage—Municipalities Act (Local Act II of 1916), sections 116, 180, 209—Jurisdiction.

The plaintiff was the owner of certain land, within the municipal limits of Allahabad, upon which a public street was constructed. Under section 116 of the Municipalities Act the public street vested in the Municipal Board. The owners of certain shops abutting on the street constructed, with the permission of the Municipal Board under section 209 of the Municipalities Act, a portico projecting over the street, to afford shelter to the shops and to the customers visiting the shops. The plaintiff thereupon brought a suit for demolition of the portico as being an infringement of his rights as owner of the land on which the street was constructed, which rights were claimed to extend to the whole of the air space above the land as well as to everything below the ground; it was further alleged that the municipality's permission could not legalise such infringement. It was not shown that the plaintiff suffered any damage or prejudice by the erection of the portico. *Held* that, without defining the exact limits of the rights of the municipality and the public on the one hand and of the

*Second Appeal No. 1335 of 1932, from a decree of Niraj Nath Mukerji, Second Additional Subordinate Judge of Allahabad, dated the 14th of November, 1932, reversing a decree of Khalil Uddin Ahmad, Munsif of East Allahabad, dated the 19th of June, 1931.