

The plaintiff has been subject to annoyance, expense and loss of reputation. The proceedings under the Legal Practitioners Act which are *quasi* criminal proceedings were instituted on information falsely and maliciously laid by the defendant. The damage sustained by the plaintiff resulted from the defendant's wrongful act. Accordingly we hold that the suit is maintainable and has been rightly decreed by the learned single Judge.

We see no reason to interfere with the award of damages. The award we consider reasonable in the circumstances of this case.

The appeal is accordingly dismissed with costs.

MISCELLANEOUS CIVIL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai

MUNNA LAL AND OTHERS (PLAINTIFFS) *v.* MAULA BAKHSH
AND OTHERS (DEFENDANTS)*

1938

October, 19

Stamp Act (II of 1899), section 2(5)—“Bond”—Instrument in the form of an agreement but containing the essentials of a bond—Stamp duty payable as on bond.

An instrument, in the form of an agreement between two parties, reciting that a certain sum is due from the first party to the second and covenanting that the first party will pay the same with interest in certain instalments, and being attested by witnesses and not being payable to order or bearer, comes within the definition of a bond as given in section 2(5) of the Stamp Act, and the stamp duty payable thereon is that for a bond, although the instrument appears to be in the form of an agreement.

Mr. *Chaturbhuj Sahai*, for the plaintiffs.

The opposite parties were not represented.

IQBAL AHMAD and BAJPAI, JJ.:—This is a reference under section 61 (1) of the Indian Stamp Act by the Inspector of Stamps, who, under a Government notification, has been invested with the powers of a Collector.

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It appears that the Inspector of Stamps, while inspecting the records in the court of the Additional Civil Judge of Ballia, came across a document (paper No. 8) in suit No. 32 of 1935 and he was of the opinion that the said document was a bond. He, therefore, recommended that the document be impounded and the deficiency in duty be realised before admitting the evidence. The learned Additional Civil Judge was, however, of the opinion that the document was only an agreement and the stamp paid on it was sufficient. Thereupon, the Inspector of Stamps acting as a Collector has applied to us under section 61(1) and we propose to consider whether the instrument in question is a bond as contended by the revenue authorities or an agreement as held by the Additional Civil Judge. The document is in the form of an agreement between two parties, but in its earlier portion it recites that a sum of Rs.6,794-7-0 is due as principal and interest from the first party to the second party and the first party covenants that out of Rs.6,794-7-0 a sum of Rs.794-7-0 will be paid by the 25th of April, 1935, and the balance will be paid later on in instalments. There is also a covenant for the payment of interest. The document is attested by witnesses. The other covenants in the document are in the nature of agreements, pure and simple.

A bond under section 2(5) includes any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another. The instrument before us is attested by witnesses; it is not payable to order or bearer and under it the first party obliges himself to pay money to the second party. The instrument clearly comes within the definition of a bond. Under section 35 of the Stamp Act this document can be admitted in evidence only on payment of the deficit duty of Rs.34 and a penalty in the sum of Rs.340.

The above is our declaration under section 61(2) of the Stamp Act, and we direct that a copy of our judg-

ment should be sent to the Inspector of Stamps and to the learned Additional Civil Judge of Ballia. We are informed by Mr. *Chaturbhuj Sahai*, who appears for the person who filed the document, that so far as he is aware, the document is still in the possession of the court.

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APPELLATE CIVIL

Before Mr. Justice Bennet and Mr. Justice Verma

BANARSI DAS (PLAINTIFF) v. MUNICIPAL BOARD,
MORADABAD AND ANOTHER (DEFENDANTS)*

1938

November,
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Master and servant—Public servant—Tenure of office—Dismissal at pleasure—Cause of action—Right of suit for damages—Teacher in Municipal school—Municipalities Act (Local Act II of 1916), section 76(a)—Unqualified power of dismissal—Municipalities Act, sections 58, 67(1).

Section 76(a) of the Municipalities Act does not lay down any limitation of the power of the Executive Officer to dismiss an employee getting a monthly salary not exceeding Rs.30 in a city, nor does it prescribe any particular method of the exercise of such power. Such power is exercisable by the Executive Officer without any qualification whatsoever, and upon such dismissal by him without assigning any cause no suit for damages for wrongful dismissal will lie.

The special statutory provisions contained in sections 58 and 67(1) of the Municipalities Act do not apply to municipal servants other than the officers mentioned therein. In the absence of any special contract between the parties, or of any express statutory limitations in regard to the exercise of the power of dismissal, a servant of a Municipal Board holds his office merely at pleasure like any other public or Government servant.

Mr. *S. B. Johari*, for the appellant.

Mr. *Shah Habeeb*, for the respondents.

BENNET and VERMA JJ.:—This is a first appeal by Benarsi Das, plaintiff, late Head Master of the Primary School, Kathdarwaza, Moradabad, against defendant No. 1, the Municipal Board, Moradabad, through its Chairman, and defendant No. 2, Muhammad Nasim

*First Appeal No. 65 of 1937, from a decree of Lakshman Prasad, Civil Judge of Moradabad, dated the 2nd of March, 1936.