

market in the ordinary course of his business at a price which was not at all unreasonable. The circumstances on which reliance has been placed on behalf of the prosecution are none of them such that the accused as a reasonable man must have felt convinced in his mind that the property which he was purchasing was stolen property. In my opinion therefore the prosecution has failed to bring home the guilt to the accused.

I accordingly allow the application, set aside the conviction and sentence and direct that the fine if paid be refunded.

*Application allowed.*

### APPELLATE CIVIL.

*Before Mr. Justice Bisheshwar Nath Srivastava and  
Mr. Justice B. S. Kisch.*

DAULAT SHAH (APPELLANT) v. THE DEPUTY COMMISSIONER OF BAHRAICH, MANAGER, COURT OF WARDS, PIPRI ESTATE (RESPONDENT).

1931  
April, 8.

*Court of Wards Act (IV of 1912), sections 15, 17, 18 and 22—Notification under section 15 calling upon persons having claims to notify them—Failure to produce original bond or its copy with the notice of claim—Subsequent production of bond without showing good cause for its previous non-production—Admissibility of document—Secondary evidence, when can be permitted to be produced—Claim of the debt independently of the bond—Failure to notify such claim, effect of.*

Where after the notification under section 15 of the Court of Wards Act (IV of 1912) calling upon all persons having claims against the ward or his property to notify them, the plaintiff sent two notices notifying his claim under a bond but he did not produce the original bond or a copy of it with the statement of his claim as required by section 17, clause (4) of that Act, *held*, that the case falls within the terms of section 22 of the Court of Wards Act and that the plaintiff having

\*Second Civil Appeal No. 91 of 1930, against the decree of Babu Bhudhar Chandra Ghosh, Subordinate Judge of Bahraich, dated the 31st of July, 1930, dismissing the plaintiff's claim.

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failed to show any good cause for the non-production of the bond, the document was inadmissible if produced subsequently. *Ehtisham Ali v. Jamna Prasad*, (1) distinguished.

*Held further*, that the plaintiff having failed to establish the loss of the bond in suit, he cannot be permitted to produce secondary evidence of it in support of his claim.

As regards the claim on the basis of the debt independent of the bond the notice of the claim having no reference to the original consideration of the bond independently the effect of the failure to notify such claims is that under section 18 of the Court of Wards Act all such claims shall be deemed to have been duly discharged.

Mr. *Hyder Husain*, for the appellant.

Mr. *H. K. Ghose*, for the respondent.

SRIVASTAVA and KISCH, JJ.:—This is a plaintiff's appeal against the judgment and decree, dated the 31st of July, 1930, passed by the Subordinate Judge of Bahraich. It arises out of a suit based on a simple money bond, dated the 16th of March, 1921, executed by Sardar Gulzar Singh, taluqdar of Pipri in favour of the plaintiff. Sardar Gulzar Singh died in 1922 leaving a minor son Daljit Singh. For a time the estate of the minor was managed by his mother as guardian appointed by the District Judge. Subsequently the management was transferred to the hands of a Receiver appointed under the Guardian and Wards Act. Ultimately on the 5th of November, 1928, the Court of Wards assumed superintendence of the estate. The usual notification under section 15 of the Court of Wards Act was issued and the Deputy Commissioner of Bahraich who was the Manager of the Court of Wards published notices calling upon all persons having claims against the ward or his property to notify them to him. The plaintiff notified his claim under the bond in suit by a notice, dated the 3rd of January, 1929, exhibit A1. He sent another notice, exhibit 13 on the 7th of January, 1929, which is practically to the same effect as the

(1) (1921) L.R., 48 I.A., 365.

previous one. But he did not produce the original bond or any copy of it with the statement of his claim as required by section 17 clause (4) of the Court of Wards Act (IV of 1912). The Deputy Commissioner on the 21st of February, 1929, disallowed the plaintiff's claim by reason of his failure to produce the bond for inspection by him. The plaintiff instituted the present suit on the 5th of March, 1929, on the allegation that he was going from his village to Bahraich with the original bond in suit on the 22nd of February, 1929, in order to produce it before the Deputy Commissioner on that date as he had been required to do by an order made the previous day but unfortunately dropped the bond in the way. He made a search for it but without success and lodged a report of the loss of the document the same day at the police station. He, therefore, alleged that he was entitled to produce a certified copy of the bond as secondary evidence of it and claimed a decree on the basis of the certified copy produced by him. The Court of Wards resisted the suit on the ground that the plaintiff having failed to produce the bond before the Deputy Commissioner, the certified copy was inadmissible in evidence. The alleged loss of the original was also denied.

The learned Subordinate Judge in an elaborate judgment in which he has discussed with care the entire evidence, oral and documentary, produced in the case, has found that the story told by the plaintiff about the loss of the original bond is palpably false and that the plaintiff has failed to prove the loss of the document. He has, therefore, held that the plaintiff is not entitled to produce secondary evidence in support of the claim. He has further found that the document was inadmissible by reason of the provisions of section 22 of the Court of Wards Act. As a result of these findings he has dismissed the suit.

The learned counsel for the plaintiff appellant has not seriously disputed the findings of the learned Sub-

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ordinate Judge on the question of the loss of the original bond. He merely relied on the observations of their Lordships of the Judicial Committee in *Ehtisham Ali v. Jamna Prasad* (1). We think that the case is distinguishable. In the present case the plaintiff had a very good motive for putting forward the false story about the loss of the bond on the 22nd of February. It is not denied that he was present on the premises of the Deputy Commissioner's Court on the 21st of February, 1929. In fact he has actually signed the order sheet containing the order of the Deputy Commissioner disallowing the plaintiff's claim. Having been informed of this order he evidently thought of inventing this story about the loss of the document in order to make out a ground for non-production of the document before the Deputy Commissioner. The learned Subordinate Judge has closely analysed the evidence adduced in support of the alleged loss of the bond. The learned counsel for the plaintiff appellant has not in his arguments made any reference to that evidence. It is not, therefore necessary for us to recapitulate it. We have no hesitation in agreeing with the conclusion arrived at by the learned Subordinate Judge that the evidence is quite worthless. This story is also inconsistent with the documentary evidence on the record. There is no reasonable explanation forthcoming why the bond in suit was not produced with the two notices (exhibits A1 and 13) sent by him to the Deputy Commissioner. In any case exhibit A5 shows that he undertook to produce the original bond after the 15th of February. The story now told that it was on the 21st of February for the first time that he was ordered to produce the bond is transparently false and cannot be believed. We must therefore uphold the finding of the learned Subordinate Judge that the plaintiff has entirely failed to establish the loss of the bond in suit. It

(1) (1921) L.R., 48 I.A., 365.

follows that he cannot be permitted to produce secondary evidence of it in support of his claim.

We have also no hesitation in agreeing with the learned Subordinate Judge that the case clearly falls within the terms of section 22 of the Court of Wards Act and that the plaintiff has failed to show any good cause for the non-production of the bond before the Deputy Commissioner.

The learned counsel for the plaintiff appellant has however strongly contended that the bond in suit was executed in consideration of four previous pronotes executed by Sardar Gulzar Singh in favour of the plaintiff in 1919, and 1920, and that even if the bond cannot be produced and the certified copy is inadmissible, he is entitled to fall back on the original consideration. This is an entirely new case which was never raised in the Court below. But apart from it, we are satisfied that such a claim based on the original consideration is also barred by the provisions of the Court of Wards Act. It is admitted that the pronotes in question were not produced before the Deputy Commissioner and therefore the pronotes would be inadmissible in evidence just as much as the bond in suit by reason of the provisions of section 22 of the Act. Confronted with this difficulty the learned counsel for the plaintiff asked us to allow him to rely upon the debt independent of the pronotes. Such a claim also if otherwise admissible would be barred by section 18 of the Court of Wards Act. The notices issued by the plaintiff refer specifically to the loan advance on the 16th of March, 1921 and evidenced by the bond of that date. It is impossible to read these notices as having any reference to the loan advanced under the pronotes much less to any loan independent of them. Thus it is clear that the plaintiff never gave any notice to the Deputy Commissioner in respect of the loan

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which he now seeks to set up independent of the pro-  
 notes. The effect of failure to notify such claims is  
 that under section 18 of the Court of Wards Act all  
 such claims shall be deemed to have been duly discharg-  
 ed. We are therefore of opinion that the plaintiff  
 cannot improve his position by being allowed to fall  
 back on the original consideration even if such a course  
 were otherwise permissible.

We are satisfied that the decision of the learned  
 Subordinate Judge is correct. The appeal fails and  
 is dismissed with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Bisheshwar Nath Srivastava.*

BHUNESHWARI PERSHAD (ACCUSED-APPLICANT) v.  
 KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY)\*

1931  
 February,  
 23.

*Criminal Procedure Code (Act V of 1898), sections 155, 162,  
 439 and 537—Investigating officer obtaining signatures of  
 witnesses to their statements, whether contravenes the  
 provisions of section 162, Criminal Procedure Code—De-  
 fect, if cured by section 537—Provisions of section 162,  
 Criminal Procedure Code, if mandatory—Non-cognizable  
 offence—Police Inspector making report to District Mag-  
 istrates and he directing institution of case—Inquiry by  
 Police, if involves breach of section 155—Accomplice and  
 spy, distinction between—Witnesses associating with ac-  
 cused to entrap him in order to detect an offence, if  
 to be treated as accomplices or spies—Evidence of such wit-  
 nesses, weight to be attached to—Revision—Decision  
 based upon consideration of evidence—High Court's power  
 to examine evidence and to interfere.*

Where a Police Inspector, who carried on the investi-  
 gation, obtained the signatures of certain witnesses to certain  
 statements made by them and reduced into writing in the

\*Criminal Revision No. 1 of 1931, against the order of L. S. White,  
 Sessions Judge of Lucknow, dated the 15th of December, 1930, upholding  
 the order of Mohammad Bashir Siddiqi, City Magistrate of Lucknow, dated  
 the 5th of November, 1930.