curable by section 533, and that the confession must therefore, be excluded.

The rest of the evidence is insufficient to support the conviction. Ata Muhammad's statement that he left the boy with Farid is no proof of the latter's guilt in the absence of evidence to show what happened to the boy afterwards. The presence of blood-stains on the appellant's shirt and *khes*, and his pointing out a well in which a *gandasa*, said to belong to Fazal, was found are also facts from which alone no inference of guilt can be drawn. The appellant is said to have pointed out other places also, but his doing so does not advance the case for the prosecution as it did not lead to the discovery of any material facts not already known.

We must accordingly hold that Farid's guilt has not been proved, and accepting his appeal we set aside the conviction and sentence and acquit him.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Chevis and Mr. Justice Harrison.

CHANDA SINGH (DEFENDANT)—*Appellant*,

versus

THE AMRITSAR BANKING COMPANY (PLAINTIFF)
AND
THE AMRITSAR NATIONAL INSURANCE COMPANY (DEFENDANT)
—*Respondents*.

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Nov. 5.

Civil Appeal No. 1156 of 1917.

Indian Evidence Act, I of 1872, section 91—suit for recovery of money advanced on a hundi *which was signed shortly after the money was actually paid*—Hundi *insufficiently stamped and inadmissible in evidence—whether plaintiff has a cause of action independent of the* hundi.

The defendant C. S. applied to the Amritsar National Insurance and Banking Company for a loan and in his application stated the security as " personal security on a *hundi* payable after 3

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months." The Directors of the Company sanctioned the loan and the money was paid to C. S. less a certain amount deducted as interest in advance for 3 months and C. S. thumb-marked the Barker's voucher. The same day C. S executed a *hundi* promising to repay the money to the Company after ninety days. The Company subsequently assigned their claim to the National Banking Company, Amritsar, and the latter at first sued on the *hundi*, but finding that it was insufficiently stamped, put in an amended plaint in which they claimed simply to recover the money advanced with interest.

Held, that the loan having been granted on the security of a *hundi* (the execution of the *hundi* being for certain reasons postponed till a short time after the money had actually been paid to the defendant) the plaintiff had no cause of action independent of the *hundi*, and as the *hundi* was inadmissible in evidence and, as section 91 of the Evidence Act forbids secondary evidence, the plaintiff's suit must fail.

Sheo Las v. *Kanhaya Lal* (1), Bakhshi *Ram Labhaya* v. *Kaka Ram* (2), and *Ganga Ram* v. *Amir Chand* (3), and C. A. 2865 of 1916 unpublished, followed.

Baij Nath Das v. *Salig Ram* (4), not followed.

Second appeal from the decree of S. Wilberforce, Esquire, District Judge, Ferozepore, dated the 2nd March 1917, affirming that of Sheikh *Munir Hussain Subordinate Judge, 2nd class, Ferozepore, dated the 18th April 1916, decreeing plaintiff's claim.*

M. S. BHAGAT, for Appellant

S. K. MUKERJI, for Respondents.

The judgment of the Court was delivered by—

CHEVIS, J.—The plaintiffs in this case are the National Banking Company, Amritsar, and the principal defendant is *Bhai* Chanda Singh of Ferozepore. The second defendant, namely, the National Insurance and Banking Company, is only a *proforma* defendant. *Bhai* Chanda Singh applied to defendant No. 2 for a loan and a reference to his application shows that in the column showing what security was offered, *Bhai* Chanda Singh stated the security as "personal security on a *hundi* payable after three months." The application was referred by the Manager of the National Insurance and Banking Company to the local directors who sanctioned the loan, and accordingly the Bank paid the defendant

(1) 61 P. R. 1888.
(2) 42 P. R. 1895.
(3) 56 P. R. 1902.
(4) (1912) 16 Indian Cases 38.

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Rs. 2,200 less Rs. 44 deducted as interest in advance for three months. This payment was made on the 26th August 1913 and *Bhai* Chanda Singh thumb-marked the Bank Memorandum (Exhibit P. 3). The same day *Bhai* Chanda Singh executed a *hundi* promising to pay the Bank the sum of Rs. 2,200 after ninety days. The National Insurance and Banking Company subsequently assigned their claim to the National Banking Company, Amritsar, who at first sued on the *hundi*, but finding that this suit would fail by reason of the *hundi* being insufficiently stamped, the plaintiffs put in an amended plaint in which they claimed simply to recover the money advanced with interest. The lower Courts having decreed the claim *Bhai* Chanda Singh appeals to this Court, and on his behalf various pleas have been raised. We do not propose to deal with all those pleas as we are of opinion that the appeal can be decided merely with reference to one plea, which is as follows :—

On behalf of the appellant it is urged that the loan transaction was incorporated in the *hundi*, that the *hundi* is the only legal basis of a suit; that the *hundi* itself is inadmissible for want of sufficient stamp, and that other evidence of the transaction is barred under section 91 of the Evidence Act. The learned District Judge holds that there was a separate transaction independent of the execution of the *hundi*, and that the contract was not embodied at once in the *hundi*. The judgment proceeds :—

> " Mohan Lal, the *Munshi* of defendant, states that a voucher was only signed when the money was advanced, and that no *hundi* was executed as no *hundi* paper was available. Ram Lal, another *Munshi* of the defendant, went out and obtained stamp paper and then sent the *hundi* to the creditor. There was thus a transaction altogether separable from the execution of the *hundi*."

We are quite prepared to accept the learned Judge's findings as to facts, but taking the facts to be as stated by him we are quite unable to find that there was more than one contract between the parties. On the facts as found by the learned District Judge it was simply a case of a loan being granted on the security of a *hundi*, the execution of the *hundi* being, however, postponed for certain reasons till a short time after the money had actually been paid to the defendant.

The original plaint simply recites that the defendant took the money and wrote a *hundi*. The amended plaint states that the defendant took the money on a voucher, and promised to give a *hundi* and wrote and sent the *hundi* the same day. The voucher or memorandum itself contains no promise to pay and the defendant's application for a loan in which, as already stated, he spoke of a *hundi* as the security to be offered for the loan, leaves no doubt whatever that the agreement between the parties from the beginning was that the money should be advanced on the security of a *hundi*. In fact, the learned District Judge does not find otherwise. All that he says is that the contract was not embodied at once in the *hundi*, and that thus there was a separate transaction independent of the execution of the *hundi*. Taking it as correct that the money was first paid and the *hundi* executed later on in the day, we are still unable to hold that there were two contracts, and that the money was not advanced on the security of the *hundi*.

On behalf of the respondents it has been argued before us that the *hundi* was subsequently offered merely as a collateral security. Now had the case been that the money had been first advanced on the defendant's personal responsibility, and that a subsequent demand for better security had been made and the *hundi* then executed, no doubt there would have been two different contracts between the parties, but as it is, we are quite unable to hold that there were any separate contracts. We have been referred to *Sheo Das* v. *Kanhaya Lal* (1). There it was laid down that though in certain cases where a negotiable instrument, taken on account of a pre-existing debt is inadmissible in evidence, the creditor may sue for the original consideration, yet when the original cause of action is the instrument itself, and does not exist independently of it, the plaintiff cannot sue except upon the instrument. A similar ruling is Bakshi *Ram Labhaya* v. *Kaka Ram* (2) which lays down that whether there is a cause of action independent of the instrument upon which independent evidence may be given, depends upon the question whether the

(1) 31 P. R. 1888. (2) 42 P. R. 1895.

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plaintiff can allege any contract as the basis of his suit which is not the contract reduced to the form of a document. See also *Ganga Ram* v. *Amir Chand* (1). A different view has no doubt been held in an Allahabad decision published as *Baij Nath Das* v. *Sahig Ram* (2), but in Civil Appeal No. 2865 of 1916 a Division Bench of this Court has refused to follow the Allahabad ruling and has adhered to the rulings of this Court, already referred to, and we have no hesitation in doing the same. There was in the present case no cause of action independent of the *hundi*, for it is clear that the money, even though advanced a short time before the actual execution of the *hundi*, was advanced on the security of the *hundi*, and that the agreement between the parties was that the loan should be made in consideration of the *hundi*. We hold, therefore, that the plaintiffs have no cause of action independent of the *hundi* and as the *hundi* is inadmissible in evidence and as section 91 of the Evidence Act forbids secondary evidence, the plaintiffs must fail.

We accept the appeal and, reversing the decisions of the Lower Courts, we dismiss the suit, but as the defendant succeeds on a purely technical ground and not on the merits, we leave the parties to bear their own costs in all Courts.

Appeal accepted.

(1) 66 P. R. 1916. (2) (1912) 16 Indian Cases 33.