

## APPELLATE CIVIL.

*Before Mr. Justice LeRossignol and Mr. Justice Broadway.*

NATHU RAM AND KARM CHAND (DEFENDANTS)  
Appellants,

*versus*

DOGAR MAL, ETC. (PLAINTIFFS) Respondents.

Civil Appeal No. 618 of 1920.

*Cause of action—suit on hundis, improperly stamped, taken in settlement of previous transactions—whether plaintiff can fall back on his original cause of action.*

The plaintiff sued for recovery of Rs. 1,500 principal and Rs. 85-4-0 interest due on two *hundis*, reciting that there had been dealings between the parties ending in the striking of a balance of account for Rs. 2,500, which the defendants paid as to Rs. 1,000 in cash and as to the balance of Rs. 1,500 by the two *hundis*. The *hundis* were held to be inadmissible in evidence being improperly stamped and the question was whether the plaintiff could fall back on his original cause of action.

*Held*, that as the contract embodied in the *hundis* was a mere sequel and consequence of the earlier transactions the plaintiff was not precluded from falling back on his original cause of action.

*Parsotam Narain v. Taley Singh* (1), distinguished.

*Miscellaneous appeal from the order of A. Campbell, Esquire, District Judge, Hoshiarpur, dated the 9th January 1920, reversing that of Pandit Omkar Nath, Zutshi, Subordinate Judge, 1st Class, Hoshiarpur, dated the 9th July 1919, and remanding the case.*

FAKIR CHAND and AMAR NATH CHONA, for Appellants.  
NEMO, for Respondents.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—Plaintiff sued in this case for Rs. 1,500 principal and Rs. 85-4-0 interest on two *hundis*, reciting that there had been dealings between the parties ending in the striking of a balance of account for Rs. 2,500 which the defendants paid, as to Rs. 1,000 in cash and as to the balance of Rs. 1,500

by the *hundis* on which this suit was based. Inasmuch as the *hundis* were improperly stamped they were held to be inadmissible and the question arose whether the debt could be proved *aliunde*. The first Court held that inasmuch as the original transactions were liquidated and a complete discharge was effected by the payment of Rs. 1,000 cash and the delivery of the two *hundis* for an aggregate of Rs. 1,500 the plaintiff could not have recourse to his original cause of action.

The learned District Judge on appeal held that a cause of action existed to the plaintiff independently of the promissory notes and that consequently the plaintiff was entitled to prove that original cause of action and the failure of consideration represented by the defective promissory notes, and, in our opinion, his view is correct. Had the defendant borrowed Rs 1,500 and the contract been embodied in the *hundis* the plaintiffs would have had no remedy other than of a suit on the *hundis*. Since, however, the contract embodied in the *hundis* was a mere sequel and consequence of the earlier transactions, we see no reason why the principles set forth in *Parsotam Narain v. Taley Singh* (1) preclude the plaintiff from falling back on his original cause of action. In this case the plaintiff had a complete cause of action for money for goods sold. That transaction was liquidated in part by the delivery of the *hundis* and as the *hundis* are found to be inadmissible in evidence and that, through the default of the debtor, the plaintiff is at liberty to sue for the original consideration.

We accordingly dismiss the appeal with costs and maintain the order of the lower Court remanding the case for redecision.

C. H. O.

*Appeal dismissed—*

*Case remanded.*

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(1) (1903) I. L. R. 28 All. 178.