

substituting for the other reliefs granted a declaration that the plaintiff has the right to discharge on to the defendants' premises the water from his *mori* and from the roof of his *sajja*, and an injunction that the defendants do not obstruct him in the use and enjoyment of that right, and a further declaration that the plaintiff has a right to an easement of free and uninterrupted light over the defendants' land to the two windows in the south wall of his *sajja*, and an injunction that the defendants be restrained from erecting or continuing any building on their land in such manner as to materially hinder or obstruct the access of light to these windows. When the plaintiff applies to enforce the decree the Court will determine what alterations, if any, should be made in the new building of the defendants. Each party to bear his own costs in this and the lower Appellate Court.

Decree varied.

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

LAKSHMANDA'S RAGHUNA'THDA'S (ORIGINAL PLAINTIFF), APPELLANT,
v. RA'MBHA'U MANSA'RAM (ORIGINAL DEFENDANT), RESPONDENT.*

1895.

September 5.

*Bond—Hundi—Dishonour—Stamp—Penalty—Offer to pay stamp duty and
penalty in second appeal not allowed—Practice—Procedure.*

An instrument, which is in the nature of a bond, is not the less a bond because it does not come into operation unless and until the *hundi* with respect to which it is passed has been dishonoured.

An instrument which is not duly stamped will not be admitted, on second appeal, on payment of stamp and penalty when there is no evidence that the stamp and penalty were tendered and refused on the hearing of the first appeal.

Rāmbrishna v. Vithu(1) referred to.

SECOND appeal from the decision of W. H. Crowe, District Judge of Poona, confirming the decree of Rāo Sāheb R. G. Bakhle, Joint Subordinate Judge.

The plaintiff sued for Rs. 1,300 due on account of two *hundis* with interest at the rate of Re. 1-8-3 per cent. per month, alleg-

* Second Appeal, No. 227 of 1891.

(1) P. J., 1873, p. 108; 10 Bom. H. C. Rep., 441.

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ing that defendant had agreed to pay interest at that rate in case the *hundis* were dishonoured by the drawee. At the trial he produced, in support of his allegation, a document (Exhibit 16) which bore an adhesive stamp of one anna and which he stated to be a receipt passed to him by the defendant and containing an agreement on his part to pay interest at the above-mentioned rate.

The following is the translation of the document :—

Receipt of payment. Shak year 1811, cyclical year called Virodhi, month Chaitra, Shudh 11th. On that day receipt of payment is passed in writing to Lakshmandás Raghunáthdás Gujeráthi, inhabitant of Peth Budhvar, by Rámchandra Mánarám Náik, inhabitant of Peth Shukravár, as follows :—Yesterday we gave you in writing two *hundis* (to be presented) at Bomlay, containing a period for payment for rupees two thousand. After deducting (from the said amount) Rs. 287-15-6 on account of interest during the period, you gave us to-day the balance of Rs. 1,712-0-6 in cash. We have received the same. Therefore there is now no dispute whatever with respect to the consideration of the two *hundis* which were given yesterday. The whole amount is received by us. The said *hundis* are given on the address of Balvantró Váman Godbole. We shall get them cashed within the stipulated time, and in default we shall pay you interest at the rate of Re. 1-8-3, according to which it was deducted to-day, without any objection after making live accounts. We three brothers live in union and we deal in contracts. This receipt of payment is given in writing after we received the mofley as mentioned above.

12th April 1889.

Attestation.

(Sd.)

Stamp
one anna.

RÁMCHANDRA MÁNARÁM,
his own handwriting. A receipt
stamp of one anna is affixed.

The Subordinate Judge held that the above document was a bond and required to be stamped as such. He, therefore, called on the plaintiff to pay the proper stamp duty and penalty, and on the plaintiff's failure to do so, refused to admit the document in evidence, and calculated interest at 6 per cent. per annum, and gave the plaintiff a decree accordingly.

The plaintiff appealed, stating that he was ready to pay the stamp duty on the document in case the Court held that it required a stamp. The Judge held that the Subordinate Judge was right in refusing to admit the document in evidence, the plaintiff having declined to pay the stamp duty and penalty. He, therefore, confirmed the decree.

The plaintiff preferred a second appeal.

Nagindás T. Marphatia, for the appellant (plaintiff):—The dispute relates to the rate of interest. Though the *hundis* do not mention interest, the defendant, in the receipt (Exhibit 16) agreed to pay us interest at a particular rate. It stipulates that interest at the rate of Re. 1-8-3 per month shall be paid in case the *hundi* was dishonoured. The Judge held the receipt to be a bond and, therefore, inadmissible in evidence for want of proper stamp. We submit that the receipt is not a bond, as it did not by itself create an obligation. It, therefore, does not fall under the definition of bond given in the Stamp Act (I of 1879), section 3, clause 4. We contend that section 23 of the Stamp Act applies to the document, and, therefore, the one-anna stamp, which it bears, is quite sufficient—*Nárain Coomary v. Rámkrishna Dás*⁽¹⁾. At the most, the document might be considered to be an agreement, and as such would require a stamp of eight annas only—*Gisborne v. Subal Bowri*⁽²⁾; *Motilál v. Munshook Kuramchand*⁽³⁾. If our contention be untenable, then we are ready and willing to pay the requisite stamp and the penalty. We have tendered the amount in Court along with the memorandum of the second appeal. Even before the Judge we had expressed our willingness to pay the stamp duty. The amount which is lying in Court should be accepted, and the document admitted in evidence.

Náráyan G. Chandávarkar for the respondent (defendant):—The view taken by the lower Courts is correct. The document is a bond and must be stamped as such—*Reference from the Board of Revenue under Section 46 of the Stamp Act, 1879*⁽⁴⁾; *Reference under Stamp Act, Section 49*⁽⁵⁾. The Subordinate Judge called on the plaintiff to pay the stamp and penalty, but he declined to do so. He merely stated in his memorandum of appeal to the District Judge that he was ready to pay the stamp in case the document was considered to be a bond. But an Appellate Court has no authority to take stamp duty—*Champabaty v. Bibi Jibun*⁽⁶⁾. This Court has also declined to take stamp duty in

(1) I. L. R., 5 Cal., 864.

(2) I. L. R., 8 Cal., 284.

(4) I. L. R., 7 Mad., 350.

(5) I. L. R., 10 Mad., 158.

(6) I. L. R. 4 Cal. 213

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second appeal—*Rámkrishna Gopál v. Vithu Shiváji* ⁽¹⁾; see also Second Appeal No. 753 of 1893 decided on the 22nd July, 1895.

FARRAN, C. J.:—We are of opinion that the instrument in question is a bond. It is not, we think, the less a bond because it does not come into operation unless and until the *hundi* has been dishonoured.

There is no evidence that the stamp and penalty were tendered and refused in the District Court. We cannot, therefore, interfere in second appeal, and now admit the instrument on payment of stamp duty and penalty—*Rámkrishna v. Vithu* ⁽¹⁾. Decree confirmed with costs.

Decree confirmed.

(1) P. J., 1873, p. 108; 10 Bom. H. C. Rep., 411.

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ránade.

QUEEN-EMPRESS v. DA'DA' HANMANT DA'NI.*

1895.

September 5.

Penal Code (Act XLV of 1860), Secs. 503, 506—Criminal intimidation.

A threat of getting a police constable dismissed from the police service is not such a threat of injury as is punishable under section 506 of the Indian Penal Code (XLV of 1860).

THIS was an application for the exercise of the High Court's criminal revisional jurisdiction under section 435 of the Code of Criminal Procedure (Act X of 1882).

The accused was charged, under sections 504 and 506 of the Indian Penal Code (XLV of 1860), (1) with having insulted the complainant, a second class head constable of police, and (2) with having intimidated him by holding out a threat of getting him dismissed from service.

The accused was tried summarily on these charges before L. M. Deshpánde, First Class Magistrate of Poona, who acquitted him on the first charge, but convicted him on the second, and sentenced him to pay a fine of Rs. 10, or in default to undergo two days'

* Criminal Revision, No. 124 of 1895.