1897.

QUEEN-EMPRESS v. GANESH RAMKRISHNA.

also *In re Anant Ramchandra Lotlikar*[1]. The Session Judge's first order was thus passed in revision, and he had no power to review again or revise it except in the manner laid down in Chapter 32—*In the matter of the petition of F. W. Gibbons*[2]; *Queen-Empress* v. *Durga Charan*[3]; *Queen-Empress* v. *C. P. Fox*[4]. Even, as regards the High Courts, it has been expressly ruled that they have no power to review or revise their own judgments or orders. Two of these decisions were Full Bench decisions. This Court has all along held this view both under the old Code, as also under the present Code—*Empress* v. *Mahomed Yashin*[5]; *Reg.* v. *Mehtarji Gopalji*[6]. It is clear that the same prohibition applies with greater force in the case of the District Courts under the express terms of sections 369 and 430. If the Sessions Judge was of opinion that his first order was improper, he should have proceeded under Chapter 32 and made a reference to this Court. He had no power to revise or review his own decision. We must, therefore, reverse that order.

Order reversed.

(1) (1886) I. L. R., 11 Bom., 438.
(2) (1886) I. L. R., 14 Cal., 42.
(3) (1885) I. L. R., 7 All., 672.
(4) (1885) I. L. R., 10 Bom., 176.
(5) (1879) I. L. R., 4 Bom., 101.
(6) (1870) 7 Bom. H. C. Rep., 67, Cr. Ca.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

IN RE JAMNADAS HARINARAN.*

1897.
December 26.

Stamp Act (I of 1879), Sec. 3 (17)—Receipt—Memorandum of payment—Document containing no acknowledgment of payment not a receipt—No stamp necessary for such document.

A made a payment of Rs. 22 to B. At A's request C made a memorandum in writing to the following effect :—"B has received Rs. 22," but affixed no stamp to it. He was charged and convicted, under section 61 of the Indian Stamp Act (I of 1879), for not affixing a receipt stamp to the memorandum.

Held, (reversing the conviction,) that the memorandum was not a receipt. To constitute a receipt within the meaning of section 3 (17) of the Stamp Act, there must be an acknowledgment, either express or implied, of the receipt, and not a mere statement that money was received.

* Criminal Revision, No. 370 of 1897.

1897.

IN RE JAMNADAS HARINARAN.

APPLICATION under section 435 of the Code of Criminal Procedure (Act X of 1882).

The accused was charged under section 61 of the Indian Stamp Act (I of 1879) with passing a receipt for Rs. 22 on behalf of his master without affixing a stamp to it.

He admitted having written the document, but contended that it was not a receipt. His case was that one Umed Bhagvan paid Rs. 22 to Kushal Vesta and desired a *dákhla*, or memorandum, to be made of the payment, and that he accordingly made a memorandum in writing to the following effect:—"Kushal Vesta has received Rs. (22) twenty-two." This memorandum was not signed by Kushal Vesta.

The Magistrate, however, held that the document was a receipt and that it had been passed by the accused for money paid to him on behalf of his master, one Kushal. He, therefore, convicted the accused under section 61 of the Indian Stamp Act, 1879, and sentenced him to pay a fine of Rs. 4.

On appeal the District Magistrate confirmed the conviction and sentence.

Thereupon the accused moved the High Court under its Revisional Jurisdiction.

K. M. Javheri for the accused.

Ráo Bahádur *V. J. Kirtikar*, Government Pleader, for the Crown.

PARSONS, J.:—The applicant has been convicted of an offence under section 61 of the Indian Stamp Act, 1879, in that he passed a document chargeable with stamp duty without affixing a proper stamp thereto.

The document referred to is said to be a receipt for a sum of Rs. 22. The original is not on the record of the case, but the copy filed, which we presume to be correct, runs thus:—"Kushal Vesta has received Rs. 22." The applicant admits that he wrote this document. His account is that Umed Bhagvan paid Rs. 22 to Kushal Vesta, and that he made this as a memorandum of the payment. The Magistrate finds that Kushal Vesta is a mistake for Kushal Moti, that Kushal Moti paid to the applicant Rs. 22

1897.

In re Jamnadas Harinaran.

which he owed to the master of the applicant, and that the applicant gave him the document, and he thinks that it is a receipt, in as much as it means that Rs. 22 have been received. It is difficult to see how the Magistrate could come to such an extraordinary conclusion, especially as Kushal Vesta was not examined as a witness in the case.

The question, however, is whether the document is a receipt. For the determination of the question we must take the document to be what it purports to be, *viz.*, a statement that Kushal Vesta has received Rs. 22. To constitute a receipt it is not sufficient that there should be a statement; there must be an acknowledgment, either express or signified or imported. It is clear in the present case that there is none. Kushal Vesta acknowledges nothing. The applicant merely writes out a memorandum of the fact that certain moneys were received by a certain other person. This memorandum cannot be held to be a receipt within the meaning of the Indian Stamp Act, section 3 (17). We reverse the conviction and sentence and acquit the applicant.

Conviction reversed.

APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

1897. *December* 23.

BALVANTA APPAJI WHATKAR (original Plaintiff), Appellant, *v.* BIRA and others (original Defendants), Respondents.*

Vendor and purchaser—Deposit—Right of purchaser to return of deposit—Lien of purchaser for the part of the purchase-money paid by him.

A purchaser of land who has paid part of the purchase-money by way of deposit, but who afterwards unjustifiably repudiates the contract of purchase, or is guilty of any default by reason of which the sale is not carried out, is not entitled to recover the deposit from the vendor.

The vendor is not necessarily entitled to retain the deposit merely because under the circumstances the Court refuses to grant specific performance against him.

From the moment part of the purchase-money is paid, the purchaser has a lien upon the property to that extent, which lien can only be lost to him by reason of his failing to carry out his part of the contract.

* Second Appeal, No. 425 of 1897.