

thing else was, in my opinion, sufficient to confer a right. Judgment in that case was based precisely on the same ground upon which the judgment of Mr. Justice Kemp and mine are based in the present case, namely, that where there is evidence showing a long and continuous user, it is sufficient for the Court to find whether it has or has not lasted long enough to confer the right to it without particular reference to any specific number of years. The observation as to evidence of a user for 4, 5, or 6 years only being possibly sufficient in certain cases, was made in that case, not by me, but by my learned colleague Mr. Justice Jackson. Not having consulted him I have no authority to place any interpretation upon the words of his judgment, but from what passed between us on that occasion, I should be extremely surprised if his words could bear the meaning which has been sought to be placed upon them, namely, that a user of 5 or 6 years alone, without anything more, and without any special circumstances in the case, would be sufficient to confer a right by prescription. As I have said before, I have no authority to place any interpretation upon the words used, but I certainly do think that Mr. Justice Jackson did not mean that, and that he never had any intention, as far as I know his opinion, to say anything of the kind.

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*Before Sir Barnes Peacock, Kt, Chief Justice, and Mr. Justice Mitter.*

SASHI BHUSAN BANERJEE (PLAINTIFF) v. TARACHAND KAR  
AND OTHERS (DEFENDANTS)\*

1869  
May 29

*Evidence—Unstamped Bond—Intention to evade the Stamp Laws.*

A bond executed between a plaintiff, who sued upon it, and the defendants, contained the following clause. "And inasmuch as we (the defendants) are urgently in want of money, and are unable to procure a stamp at the moment, we have executed the bond on plain paper. Should it be necessary for you (plaintiff) to bring a suit against us, whatever penalty you may have to pay shall be made good by us, with interest."

The Small Cause Court Judge, before whom the case was tried, considered the above clause in the bond to be evidence of an intention between the parties to avoid the stamp law, and refused to receive evidence to the contrary. He also

\* Reference from the Judge of the Small Cause Court at Ranaghat.

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refused to admit the bond in evidence. *Held*, on reference to the High Court, that the clause in question did not amount to an agreement to evade the Stamp Laws. The Judge might have inferred from it that it was the intention of the parties to evade the Stamp Laws, but in that case he should have heard evidence to the contrary.

This case was referred for the opinion of the High Court by the Judge of Small Cause Court at Ranaghat, under the circumstances disclosed in his order of reference, which was as follows :—

Plaintiff sued on an unstamped bond, and at the time of filing his plaint deposited with Nazir the proper amount of stamp duty and penalty required in accordance with clause 2, section 17 Act X. of 1862.

On the case coming on for trial, defendants' pleader objected to the admission of the bond in evidence, on the ground that the omission to execute it on stamped paper arose from an intention to defraud the Government by evading payment of the stamp duty. (Section 15 clause 1, Act X. of 1862.)

On this subject the bond itself contains the following stipulation: "And inasmuch as we (defendants) are urgently in want of the money, and are unable to procure a stamp at the moment, we have executed the bond on plain paper. Should it be necessary for you (plaintiff) to bring a suit against us, whatever penalty you may have to pay shall be made good by us, with interest."

It seems to me that this amounts to nothing less than a deliberate agreement between plaintiff and defendants to evade the Stamp Law. There can be no doubt that had defendants paid the money, and so released plaintiff from the necessity of bringing a suit, as it is natural to suppose the intention of both parties to have been at the time, Government would have been defrauded of the stamp duty required for a bond of the amount specified.

Supposing, as is probably the case, that stamp paper was not procurable at the time of the loan, which took place upwards of four years ago, plaintiff, if he really intended to carry out the provision of the Stamp Law, might have had recourse to the Collector under clauses 1 or 2 of section 15, Act X. of 1862.

It is contended for plaintiff that the parties are not in *pari delicto*, and that it is unjust to allow defendants to take advantage

of their own wrong ; but I am of opinion that the legal maxim in question has no bearing on the present case ; and as I hold that the words of the contract translated above indicate an intention to evade the Stamp Law, I have refused to receive oral evidence to the contrary, and dismiss the case contingently on the opinion of the High Court.

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The case was sent back to the Judge to state the point of law upon which he wished the decision of the Court, which was stated by him as follows in returning it :

The question on which I request the opinion of the High Court, and which I regret not having stated more distinctly before, is, whether I have rightly construed the extract from the bond before quoted, as containing an agreement between plaintiff and defendants to evade the Stamp Law, which would preclude the Court from admitting the document, in evidence under the provisions of section 17. Act X. of 1862.

*Baboo Braja Prasad Bose for plaintiff.*

The opinion of the High Court was delivered by

PEACOCK, C. J.—We are of opinion that in point of law the construction of the Judge of the Small Cause Court is not correct. The bond certainly did not contain any agreement between the plaintiff and the defendants to evade the Stamp Laws. The stipulation in the bond, if true, shows that the borrowers were urgently in want of the money, and were unable to procure a stamp at the moment ; and that they therefore executed the bond on plain paper. It was then provided that should it be necessary for the plaintiff to bring any suit on the bond, whatever penalty the plaintiff should have to pay would be paid by the defendants with interest. That did not amount to an agreement to evade the Stamp Laws. It might have amounted to evidence from which the Judge might have inferred, as a matter of fact, that it was the intention of the parties to evade the Stamp Laws ; but in that case it would have been the duty of the Judge to receive oral evidence to the contrary which he refused to do.