

CRIMINAL REVISION.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

HIRA LAL SIRCAR AND OTHERS (PETITIONERS) *v.* QUEEN-EMPRESS
(OPPOSITE-PARTY.) *

1895
May 10.

Stamp Act (I of 1879), Offence under—Acknowledgment of debts in writing—Attestation by witnesses—Bonds—Stamp Act (I of 1879), section 3, clause 4 (b), schedule 1, article 1 and section 61.

Documents which are in form acknowledgments only are not converted into bonds, as defined in section 3, clause 4 (b) of the Stamp Act (I of 1879), merely because they contain memoranda as to the rate of interest at which the loan is made and are attested by witnesses. No document can be a bond within the above section, unless it is one which by itself creates an obligation to pay the money.

IN this case some of the accused, who were money-lenders, were convicted by the Deputy Magistrate of Beerbhoom under section 61 of the Stamp Act and section 109 of the Penal Code, and the others who were their debtors were convicted under section 61 of the Stamp Act. The former used to lend money to the latter, and the transactions were entered in the account books of the money-lenders, and the entries attested by one or more witnesses. A form of one of such entries is given in the judgment of the High Court.

Babu *Karuna Sindhu Mukerjee* appeared on behalf of the petitioners in support of the rule.

No one appeared to show cause.

Babu *Karuna Sindhu Mukerjee*.—The question arises whether these entries in the account books, because they are attested by witnesses, come within the definition of “bond” as given in section 3, clause 4 (b) of the Stamp Act. The form of the entries and the purpose for which they were made clearly show that they were mere acknowledgments of debts due, as contemplated in schedule 1, clause 1 of the Stamp Act. Mere attestation by witnesses does not make them bonds. By themselves they do not create any obligation to

* Criminal Rule No. 201 of 1895, against the order passed by G. Gordon, Esq., Sessions Judge of Beerbhoom, dated the 26th March 1895, confirming the order passed by Babu Atal Behari Maitra, Deputy Magistrate of Beerbhoom, dated the 9th of January 1895.

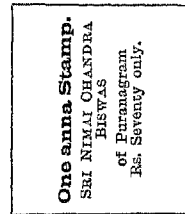
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pay any money. See *Binja Ram v. Raj Mohun Roy* (1), and *Chowksi Himuttal v. Chowksi Achrutal* (2). Then there was no intention of evading payment of the proper stamp duty, nor was any opportunity given to the accused for paying the duty and penalty. See sections 37 and 40 of the Stamp Act, and *Empress v. Janki* (3) and *Queen-Empress v. Soddanund Mahanty* (4).

The judgment of the High Court (PETHERAM, C.J., and BEVERLEY, J.) was as follows :—

Several questions have been raised in this case, among them being the question whether certain documents are properly stamped. If that question is answered in favour of the accused persons, it will not be necessary to consider the others.

The documents in question are written in the account books of a firm of bankers or money-lenders, and are in the following form :—



“ Account of Sri Nimai Chandra Biswas of Puranagram.

Payments :

Amounts due :

Advance, 19th Assin 1301,
 through self in cash Rs. 75-0.
 Rupees seventy-five is taken by
 me as loan. I shall pay interest
 on it at the rate of Re. 1-0 one
 per cent per mensem.

Witnesses :

Sri Hem Chandra Mukho-
 padhya of Bajitpur (writer),
 Sri Kisori Mohan Ghose of
 Harisara.”

The question is whether these writings are bonds within the meaning of section 3, sub-section 4, clause (b) of the Stamp Act, or acknowledgments of debts within the meaning of schedule 1, article 1 of the same Act.

(1) I. L. R., 8 Calc., 232.

(2) I. L. R., 8 Bom., 194.

(3) I. L. R., 7 Bom., 82.

(4) I. L. R., 8 Calc., 259.

We are very clearly of opinion that they are not bonds, but acknowledgments only, and are therefore sufficiently stamped with one-anna stamps. The definition of a bond which is relied on is: "Any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another." The important word in this definition is the word "obliges," and no document can be a bond within it unless it is one which itself creates an obligation to pay money, as is the case with those documents which are known as bonds according to the common use of the word, but is not the case with acknowledgments of advances, or of the purchase and receipt of goods, the obligation to pay for which is not created by the instrument, but arises from the promises to repay advances and to pay for goods, which the law always implies when money is borrowed or goods are purchased.

The present documents are, in form, acknowledgments only, and we do not think the mere fact that they contain memorandums as to the rate of interest at which the loan is made, and are attested by witnesses, is sufficient to convert what is otherwise a mere acknowledgment into a bond, which itself creates an obligation to pay the money.

The convictions and sentences must be set aside, and the fines, if paid, must be refunded.

S. C. B.

Conviction set aside.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

SHBO PROGASH TEWARI (PETITIONER) *v.* BHOOP NARAIN PROSAD
PATHAK AND ANOTHER (OPPOSITE PARTY.)*

1895
March 14.

*Penal Code (Act XLV of 1860), sections 21 and 186—Escape from arrest—
Nazir's power of delegation—Public servant.*

A Nazir has authority to delegate the execution of warrants of arrest.
Dharam Chand Pal v. Queen-Empress (1) followed.

* Criminal Revision No. 46 of 1895, against the order passed by G. G. Dey, Esq., District Judge of Shahabad, dated the 29th of December 1894, affirming the order of Babu Nandulal Dey, Munsif of Buxar, dated the 31st of July 1894.

(1) *Ante*, p. 596.