

*Before Mr. Justice Jackson and Mr. Justice Kennedy.*

GOBIND RAM MARWARY (PLAINTIFF) *v.* MATHOORA SABOOYA  
AND OTHERS (DEFENDANTS).\*

1878  
Jan'y. 11.

*Hundi—Notice of Dishonor.*

Previous formal written notice of dishonor of a hundi is not necessary before suit brought, unless it can be shown that the parties charged have been prejudiced by such omission.

THIS was a suit for the recovery of principal and interest on a hundi, drawn by one Chatanki Loll on Maduri Lal of Calcutta, in favor of the defendants Thakoor Ram and Chooti Sahoo. The hundi was afterwards indorsed to Gobind Ram Marwary, the plaintiff, by the defendants Thakoor Ram and Chooti Sahoo. The defendant Mussamut Mathoora Sabooya had been made a party on the allegation that the second and third defendants had in reality indorsed the hundi to the plaintiff under her authorization and behalf. For the defence it was urged (among other matters) that no formal written notice of dishonor had been served. The Court of first instance overruled the point as to notice of dishonor, but found for the defendants as regards another issue on the facts. The lower Appellate Court, on the alleged authority of *Jeetun Loll v. Sheo Churn* (1), *Radha Gobind Shaha v. Chunder Nath Dass Shaha* (2), and *Anunt Ram Agurwala v. Nuthall* (3), held, that formal notice of dishonor was necessary before suit brought, and on this ground alone dismissed the appeal, giving no judgment on the question of fact. The parties appealed specially to the High Court.

Messrs. *R. E. Twidale* and *M. L. Sandel* for the appellant.

\* Special Appeal, No. 670 of 1877, against the decree of Baboo Mothoora Nath Goopta, First Subordinate Judge of Bhagalpore, dated the 19th December 1876, affirming the decree of Baboo Lalgopal Sen, Sudder Munsif of that District, dated the 29th of August 1876.

(1) 2 W. R., 214.

(2) 6 W. R., 301.

(3) 21 W. R., 62.

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Baboo *Taruck Nath Sen* for the respondents.

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v.  
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SABOYA.

JACKSON, J.—The lower Appellate Court dismissed the appeal of the plaintiff, and, it may be said, virtually dismissed his suit, on the ground that notice—that is to say, formal written notice—of dishonor had not been served on the defendants. Now, neither the case which the lower Appellate Court cites, *Anunt Ram Agurwala v. Nuthall* (1), nor any other case, has been brought to our notice which decides that in this country either a written formal notice of dishonor is necessary, or that the absence of such a notice would be a sufficient defence unless it is shown that by such absence the defendant has been prejudiced. So far, therefore, the judgment of the lower Appellate Court appears to be erroneous, and must be set aside. [The learned Judge then proceeded to consider the other points in the case, and with reference to them, the case was remanded to the lower Appellate Court.]

*Case remanded.*

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## ORIGINAL CIVIL.

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*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Markby.*

ELIZA SMITH (PLAINTIFF) *v.* THE SECRETARY OF STATE  
(DEFENDANT).

1878  
*Feb. 18 &  
Mar. 4.*

IN THE MATTER OF ACT II OF 1874.

*Res Judicata—Civil Procedure Code (Act X of 1877), s. 13—Application under the Administrator-General's Act (XXIV of 1867), s. 60—Act II of 1874, s. 63—"Suit."*

An application by petition under s. 63 of Act II of 1874 is a suit within the meaning of s. 13 of Act X of 1877, and therefore such an application is barred by the disposal of a former application in the same matter under the same section, or under s. 60 of Act XXIV of 1867, which the Act of 1874 repeals: this is so whether the order is one for payment of money or one dismissing the petition.

S. 63, Act II of 1874, contemplates that the money which is the subject of the petition may be claimed by parties other than the applicant, and that