

Referred Case.

ATMA'RA'M GULA'BRA'I v. AM'ROHAND RUPCHAND.

Validity of bond subsequently stamped—Acts XXXVI. of 1860 and X. of 1862—Act VIII. of 1859, Secs. 39, 129, and 130—Reg. XVIII. of 1827.

A bond stamped subsequently to the institution of the suit is valid, under the provisions of the Civil Procedure Code and of the Stamp Acts of 1860 and 1862: provided it be properly stamped when produced at the first hearing of the suit, and when the Court is asked to receive it in evidence.

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CASE referred for the decision of the High Court by the Acting Assistant Judge of Ahmednagar, under Sec. 28 of Act XXIII. of 1861.

“On the 2nd of May 1861, Atmárám Gulábrái filed a suit in the court of the Munsif of Yeolá, for the purpose of recovering a sum of Rs. 300, alleged to be due by deceased Rupchand, represented by his son and heir, Amírchand, on a bond dated the 2nd of January 1854. As the bond was not written on stamped paper, Atmárám paid to the Munsif the proper amount of stamp duty and the penalty; and it was subsequently stamped on the 4th of January 1862.

“On the 3rd of December 1861 the Munsif held, under the precedent afforded by the decision passed under date the 22nd of July 1854, by the late Şadr Divání Adálat, in Special Appeal No. 3116 (a), that the bond, which was stamped subsequently to the date of the institution of the suit, was not admissible as evidence; and rejected the claim.

“Atmárám has preferred an appeal, urging that, under the provisions of Act XXXVI. of 1860, which took effect on the 1st of October of that year, the bond is valid.

“The point which I would beg to refer is, whether or not a bond stamped subsequently to the date of the institution of the suit is valid.

“The bond was written when Reg. XVIII. of 1827 was in force; and there is another ruling of the late Şadr Divání

Adalat, besides the one quoted by the Munsif, No. 19 of special certified list, decided on the 4th of July 1856 (b). The provisions of Sec. 13 of Act XXXVI. of 1860 do not apply to the bond in question. I am, therefore, of opinion that it is invalid.”

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The case was heard before COUCH, C.J., and NEWTON, J.

PER CURIAM :—The question submitted to us in this case is, whether or not a bond stamped subsequently to the date of the institution of the suit is valid.

We are of opinion that the Code of Civil Procedure only requires the document to be properly stamped when produced at the first hearing of the suit, and when the Court is asked to receive it in evidence. This appears from the terms used in Sec. 130 of Act VIII. of 1859, and in cl. 4, Sec. XIII. of Act XXXVI. of 1860, and also in cl. 1, Sec. XVII., of Act X. of 1862.

The decisions of the Sadr Court, which were made before the Code of Civil Procedure came into operation, are not applicable. Sec. 39 of the Code does not require the Court, on the presentation of the plaint, to inspect the exhibit, as in Sec. 129, but only to mark the document for the purpose of identification, and to examine and compare the copy with the original.

But although the bond in this case might have been stamped subsequently to the institution of the suit, it was necessary that it should be stamped under Règ. XVIII. of 1827, which apparently had not been done.