

## [ORIGINAL CIVIL JURISDICTION.]

1875.  
July 23.

Suit No. 827 of 1873.

BHA'URA'M MADAN GOPA'L .....Plaintiff.

v.

RA'MNA'RA'YAN GOPA'L and others .....Defendants.

*Stamp—Document—Evidence—Act XVIII. of 1869, Sections 5, 18 and 28.*

A document, which by law requires a one-anna adhesive stamp to be affixed, must be received in evidence, if, at the time of its being tendered, it bears the requisite stamp, even though such stamp has been affixed subsequently to the execution of the document.

THE plaintiff sued on an account adjusted in his book and signed by one of the defendants, and on three subsequent adjustments, founded on the first, and contained in three letters signed by the same defendant. At the hearing before Pinhey, J.,

*Inverarity*, who with *Purcell* appeared for the plaintiff, put in evidence the adjustment in the plaintiff's book, which was then duly stamped with a one-anna adhesive stamp.

*Badrudin Tyabji*, who with *Farran* appeared for the defendants, in cross-examination of the plaintiff, elicited the fact that the stamp was not affixed at the time that the signature to the adjustment was taken, but was affixed by the plaintiff himself some time subsequently to the adjustment.

In his address to the Court, *Badrudin Tyabji* contended that, the stamp having been affixed subsequently to its execution, the document was not properly admissible in evidence, and ought not to be considered by the Court.

*Inverarity* called the attention of the Court to an unreported decision of a Full Bench of the High Court in the case of *Punjá Pallan v. Shekh Adam* and another.

PINHEY, J.:—I certainly was not aware of the existence of such a decision. However, that being the decision of a Full Bench of this Court, whatever may be my own opinion I consider that, sitting alone in a Division Court, I am

bound by it. I must, therefore, hold that the adjustment in his book, relied on by the plaintiff, is properly admissible in evidence.

1875.

BHA'URA'M  
MA'DAN  
GOPAL

v.

RAMNA'RA'  
GAN GOPAL.

*Note.*—The case referred to was that of *Punjá Pallan v. Shelh Adam Abdula and Baba Sahéb Bisla*, Cause No. 11315 of 1872 in the Bombay Court of Small Causes, referred by J. O'Leary, First Judge, for the opinion of the High Court under Act IX. of 1850, Section 55, on 30th August 1872, with the following statement :—

“ This case was originally heard on the 16th July 1872 by the Fourth Judge of this Court, sitting under Section 23 of Act IX. of 1850, and was non-suited by him under the following circumstances :—

“ The plaintiff produced in support of his case a document ( a copy translation of which, marked A, is annexed) the first entry of which, under Act XVIII. of 1869, Schedule II., Clause 5, required a stamp of one anna. When it was for the first time tendered in evidence before the Court on 16th July, it bore an adhesive stamp of one anna in value ; but inasmuch as the same document had been, on a previous occasion, produced before the same Judge, and it then bore no stamp, the Judge held that, under Section 28 of the Stamp Act, the document could not be received in evidence, inasmuch as it had been stamped ‘subsequent to the execution thereof’. The fact of the document having been thus stamped after its execution, was also admitted by the plaintiff.

“ The plaintiff, being unable to substantiate his case without the document in question, was non-suited.

“ On 30th July 1872 the plaintiff applied to the Bombay Court of Small Causes, consisting of the First, Third, and Fourth Judges, for a new trial on the ground that the learned Fourth Judge was wrong in rejecting the document A.

“ The said Court ordered a rule *nisi* to issue on the said application for a new trial, which order was, on 13th August, made absolute. But the Judges, entertaining doubts upon the question of law involved in the case, made the said judgment (that the rule be made absolute) contingent upon the opinion of the High Court on the following case, which they now beg to state to the High Court.

“ When a document, which under Act XVIII. of 1869 requires a stamp of one anna, is tendered in any Court, and, at the time it is so tendered, bears the requisite stamp, but it is within the knowledge of the Court that such a stamp was affixed to the document subsequent to its execution, is the Court at liberty to receive the document, or is it bound to reject it ?

“ In support of the ruling of the Fourth Judge at the hearing, Section 28 of the Stamp Act is relied on as containing an absolute prohibition of the stamping as it took place in the present case, and Section 29 of the same Act would

1875.  
 BIHA'URA M  
 MA'DAN  
 GOPAL  
 v.  
 RA'MNA'RA-  
 YA'S GOPAL.

appear to attach a criminal penalty to the act of stamping as aforesaid. The principle also laid down in *De Begnis v. Armstead* (10 Bing. 107) and *Ferguson v. Norman* (6 Scott 794), namely, that any contract which is made penal by any statute is void, may perhaps, by analogy, be applied to the present case, and the stamping of the document in violation of Section 28 of the Stamp Act may be treated as a nullity. Holding the stamping after execution to have the effect of making the document admissible, would also appear to open a wide door for fraud on the revenue, and would apparently result in this, that the Civil Courts would recognize and sanction the doing of an act declared by the Legislature to be criminal.

“On the other hand the Judges entertain doubts whether, under the peculiar wording of Section 18 of the Stamp Act, a Court is authorized to reject a document presented to it under the present circumstances. This appears to be the only section giving power to a Court to reject, for want of stamp, a document otherwise legal evidence in the cause. The language of that section seems exclusively to refer to the state of facts at the time the document is produced in Court. The words ‘unless it shall be stamped according to the law in force at the time of its execution,’ or any equivalent, seem to be studiously avoided, and some of us entertain doubts whether, when a document, when presented to the Court, ‘bears a stamp of a value not less than the amount of the duty with which it is chargeable, &c.’ we have any power to reject it. In other words, we doubt whether we have any right to construe Section 18 as if it contained the words ‘unless it shall have been stamped according to law.’ It has been suggested that this form of Section 18 was adopted in order to avoid the exclusion of certain documents which bore a stamp of sufficient value, but were not stamped ‘according to law,’ e. g., promissory notes payable on demand, executed prior to the present Act, bearing an adhesive stamp of one anna instead of an impressed stamp of the same value.

“It appears also not unworthy of notice that if the affixing of a one-anna stamp on a document subsequent to its execution be a nullity, the law is constantly violated, even by the officers actually engaged in the collection of the public revenue. It is believed to be their practice to sign, and in every respect execute, receipts for taxes in large numbers on unstamped paper, and only to affix the stamp on payment of the money.

“Under these circumstances we respectfully request the opinion of the High Court on the question stated above.”

The first entry in the document A, referred to in the foregoing statement, was as follows:—

“The account of Mussalman Shekh Adam hekh Abdula and Ababin Baba Sahab Bisla, the two individuals, for Samvat year 1928, the 18th day of ebruary 1872, the day of the week—Sunday.

Cr.

Dr.

1873.

120-12. The 18th day of February of the year 1872, the balance of the old account; the money in respect of rice is Rs. 120-12-0. Page 134.

BHA'URA'M  
MADAN  
GOPAL  
v.  
RA'MNA'RA-  
YA'N GOPAL.

Shekh-Adam bin Shekh Abdula × his signature. Agreeably to what is written above, Rs. 120-12-0.

The hand-writing of Ahmed bin Suleman Khunadkar; this is written at the request of the parties.

120-12. Aba bin Baba Bisla, his signature. Agreeably to what is written above, Rs."

The reference was considered by a Full Bench consisting of Sargent, Mellill, and Green, JJ., neither of the parties being represented by counsel, and the following was the judgment of the Court delivered by

SARGENT, J.:—We are of opinion that the document should have been received in evidence. It is not excluded by the terms of Section 18, and although perhaps excluded by the spirit of the Act, as shown by the express prohibition against stamping such a document after execution, contained in Section 29, coupled with the wording of Section 26, still it is not so by the letter of the law.

The rule as laid down by Lord Cairns in *Partington v. Attorney General* (L. R. 4 H. L. 100; see p. 122), when discussing the construction of fiscal legislation, is applicable to the present case.