

but no evidence was given of such custom. The clause in the indent by which the defendants are enabled in case of "dispute as to inferiority of quality, time of delivery, or otherwise to cancel the order or refer it to arbitration," would be inserted for the protection of the commission agent in either character, and, therefore, affords no reason for assuming the existence of any custom on the subject. We must, therefore, answer the questions referred to us in the negative. Plaintiff to pay costs of the reference.

Attorneys for the plaintiff:—Messrs. *Thakoredas, Dharamsi and Cama.*

Attorneys for the defendants:—Messrs. *Craigie, Lynch, and Owen.*

1889  
JUNE 21.  
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ORIGINAL  
CIVIL.  
13 B. 470=  
Chitty's  
S. C. R.  
216.

13 B. 484.

[484] ORIGINAL CIVIL.

Before Mr. Justice Parsons.

JETHIBAI, WIDOW (*Plaintiff*) v. RAMACHANDRA NAROTTOM  
(*Defendant*).<sup>\*</sup> [1st July, 1889.]

*Stamp Act I of 1879, ss. 16 and 34—Inadmissibility of stamped document—Stamped after execution—Not duly stamped.*

A receipt (dated 1887) stamped subsequently to execution, but before production in Court, was tendered in evidence.

*Held*, the document was inadmissible. Section 34 of Act I of 1879 requires instruments chargeable with duty to be 'duly stamped' which in this case meant 'stamped before or at the time of execution' as laid down by s. 16 of the Act.

*Latham* (Advocate General) and *Inverarity*, for the plaintiff.

*Lang* and *Jardine*, for the defendant.

During the examination of the plaintiff a book was produced containing a receipt, in Gujarati, dated 1887, with a one-anna receipt stamp attached. The plaintiff having proved the said receipt.

*Inverarity* tendered the same in evidence.

*Jardine*, for the defendant, desired to cross-examine the plaintiff as to the date when the stamp was affixed.

*Inverarity*, for the plaintiff:—Such questions are irrelevant. The document now bears the necessary stamp, and that is sufficient: it must be received in evidence. He cited *Bhauram Madan Gopal v. Ramnarayan Gopal* (1), *Kali Churn Das v. Nobo Kristo Pal* (2).

*Jardine, contra.*

JUDGMENT.

PARSONS, J.—Both of the cases cited are decisions under the Stamp Act of 1869. That Act (XVIII of 1869) by s. 18 provided only that the instrument should bear a stamp of a value not less than the amount of the proper duty, in order to be admissible. The present Act goes much further than this. It provides, by s. 34, that an instrument shall not be admitted in evidence, "unless such instrument is duly stamped." [485] Such a provision clearly imposes upon the Court the duty of seeing

\* Suit No. 121 of 1889.

(1) 12 B.H.C.R. 209.

(2) 9 C.L.R. 272.

1889  
JULY 1.  
—  
ORIGINAL  
CIVIL.  
—  
13 B. 484.

in every case whether an instrument presented to it is 'duly stamped' or not. 'Duly stamped' is defined in the Act to be "stamped in accordance with the law in force when such instrument was executed, or first executed." When this instrument was executed, Act I of 1879 was in force. That Act, in s. 16, lays down that "all instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution." If an instrument is not so stamped, clearly it is not stamped, according to the Act and cannot be held, therefore, to be 'duly stamped.' As it is the duty of the Court to ascertain whether or not the instrument was stamped before or at the time of execution, I allow the questions.

The witness was then examined on the subject; and, on the evidence, the Court, finding that the document had not been stamped at or before the time of execution, refused to admit it in evidence. The Court referred to *Sakalchand Jadhavji v. Gulabchand Motichand* (1).

Attorneys for plaintiff:—Messrs. *Pestonji and Rustim*.

Attorneys for defendant:—Messrs. *Macfarlane, Edgelow, and Hemming*.

13 B. 488.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nanabhai Haridas.*

BALVANTRY OZE (*Original Plaintiff*), *Appellant v. SADRUDIN*  
(*Original Defendant*), *Respondent*\* [22nd March, 1887.]

*Civil Procedure Code (Act XIV of 1882), s. 583—Execution, power of Court to award restitution of benefits on reversal of decree in—Procedure—Jurisdiction—Court not limited in execution.*

The procedure provided by s. 583 of the Civil Procedure Code (Act XIV of 1882) for obtaining any benefit (by way of restitution or otherwise) under a decree passed on appeal is not confined to cases where the restitution desired is provided for by the decree itself.

[486] The plaintiff brought a suit for the recovery of certain timber, or damages for its removal, and got a decree. The defendant appealed, and was ultimately successful in getting the plaintiff's suit dismissed, but meanwhile the timber had been taken in execution of the decree and sold. The defendant applied to the original Subordinate Judge's Court in execution of the High Court decree for restitution of the timber, or Rs. 13,325 damages. The plaintiff objected that the defendant must bring a suit, and could not make this claim in execution. The Subordinate Judge overruled this objection, but held that he was limited to a grant of Rs. 5,000, the pecuniary limit to his original jurisdiction, and awarded the defendant that sum for his timber.

*Held*, that the matter was rightly dealt with in execution, and that the jurisdiction of the original Court in execution was neither ousted by the fact that the value of the property in dispute exceeded the pecuniary limits of the Court's jurisdiction, nor was such Court limited in its award to the sum of Rs. 5,000.

[R., 21 C. 989 (996); 17 M. 82=4 M.L.J. 1 (2).]

THIS was a second appeal from a decision of H. J. Parsons, District Judge of Thana.

\* Second Appeal, No. 205 of 1885.

(1) Printed Judgments for 1882, p. 29.