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saddled with a stamp duty which would exceed the amount of the purchase-money. In framing the Stamp Act the Legislature could not have intended such a result.

ORDER.

SARGENT, C. J.—Section 24 of the Stamp Act is applicable. The Bombay High Court has considered the point in several cases—*Sha Nagindas Jeychand* v. *Halalkhore Nathwa Gheeslā* (1), *In re Ramkrishna* (2), and *Ramkrishna* (3).

The ruling of this Court in *Sha Nagindas Jeychand* v. *Halalkhore Nathwa Gheesla* (1) must be followed.

Order accordingly.

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15 B. 536.

[536] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

MULTANCHAND SHIVRAM (*Original Plaintiff*), *Appellant* v. KHAN SAHEB KHARSEDJI NASARVANJI (*Original Defendant*), *Respondent.**
[17th January, 1891.]

Civil Procedure Code (*Act XIV of* 1882), *s.* 545—*Stay of execution—Notice to decree-holder—Practice.*

A final order for staying the execution of a decree should not be made without giving the decree-holder notice of the judgment-debtor's application. The application should be supported by an affidavit.

APPEAL from the order of T. Hamilton, Acting District Judge of Ahmednagar, in application No. 223 of 1889.

The plaintiff obtained a money decree for Rs. 2,326-12-0 against the defendant.

The defendant appealed against the decree to the District Court, and applied for stay of execution pending the disposal of the appeal.

The application was to the following effect:—

"If the decree is executed against me, the appellant, I shall have to sell my immoveable property, and if the property is sold under such pressing circumstances, it will not fetch a proper price; and if the lower Court's decree is eventually reversed in appeal, the property would be sold for no reason, and I would suffer a great loss. I, the appellant, therefore, pray that the Court may be pleased to order execution to be stayed."

This application was not supported by any affidavit.

The District Judge, without issuing any notice to the decree-holder, passed an order for stay of execution on security being furnished.

Against this rule, the decree-holder appealed to the High Court.

Ghanasham N. Nadkarni, for appellant.—The order for stay of execution is improper, and contrary to the universal practice of the Courts in this Presidency. Notice ought to have been [537] issued to the

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* Appeal No. 46 of 1890.

(1) 5 B. 470. (2) 9 B. 47. (3) P. J. for 1884, p. 260.

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decree-holder before execution was stayed. The application for stay of execution is not even supported by an affidavit.

Gangaram Bapsoba Rele, for respondent.—There is no provision in the Code of Civil Procedure requiring notice to be given to the decree-holder before an order is made under s. 545.

JUDGMENT.

BIRDWOOD, J.—The plaintiff obtained a decree for money, and the District Judge has, on the application of the defendant, ordered stay of execution without giving notice of the application to the plaintiff. There is no express provision in s. 545 of the Code of Civil Procedure requiring notice to be given to the decree-holder before an order is made under the section; but it is obviously unjust to pass a final order for staying the execution of a decree without giving the decree-holder notice of the judgment-debtor's application. It is the universal practice of the Courts to give notice to the decree-holder before disposing finally of an application for stay of execution. Moreover, the allegation in the defendant's application is unsupported by any affidavit. There was really, therefore, no evidence before the District Judge to enable him to arrive at any decision as to the truth of the allegation. Nor, again, was the allegation, even if proved to be true, of a kind to justify an order for stay of execution in the present case.

We reverse the District Judge's decree in execution and reject the defendant's application, with costs throughout on him.

Order reversed.

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15 B. 537.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

LALJIBHAI SHAMJI AND OTHERS (*Plaintiffs*) *v.* THE GREAT INDIAN PENINSULA RAILWAY COMPANY (*Defendants*).*

[12th January, 1891.]

Railway Company—"Terminal charges"—Right of G. I. P. Railway Company to levy terminal charges—Stat. 12 and 13 Vic., Cap. LXXXIII (Local & Pers.)—Act IX of 1890, *ss.* 41, 45, 46.

"Terminal charge" means a charge for the use of goods station and for the various duties which a railway company, as common carriers, perform in connection with the goods consigned to them for carriage.

[538] The plaintiffs sued to recover from the defendants the sum of Rs. 1,34,152-11, which during the three years prior to suit the plaintiffs had been obliged by the defendants to pay as "terminal charges" on consignments of cotton made by the plaintiffs from up-country stations to Bombay. The plaintiffs contended(1) that such charges were illegal; (2) that if not illegal they were excessive.

Held, dismissing the suit, that the defendants were entitled to charge "terminal charges" on the goods carried by them for the plaintiffs, subject only, as to the rates and amounts thereof, to the sanction of Government; and that the rates charged to the plaintiffs were not higher than the sanctioned charges.

Semble.—Under ss. 41, 45 and 46 of Act IX of 1890 the High Court has no jurisdiction to consider or entertain a claim relating to terminals charged by the defendants subsequently to the time at which that Act came into operation.

[**Affirmed**, 16 B. 434; **R.**, 17 B. 723.]

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* Suit No. 488 of 1890.