

Her mother is willing to act as such ; but a married woman, though she can act as the next friend of an infant plaintiff, cannot be appointed guardian *ad litem* for an infant defendant [368] (s. 457 of the Civil Procedure Code). I must, therefore, call upon defendant's father, who is said to be a station master near Baroda, to act as guardian *ad litem* for his infant daughter.

Attorney for the plaintiff:—Mr. F. P. Pavri.

Pleader for the defendant:—Mr. Sorabji Bezonji.

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18 B. 368.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

RAM DYAL SALIGRAM (*Plaintiff*) v. NURHURRY BALKRISHNA
(*Defendant*).* [10th March, 1894.]

Practice—Inspection—Defendant's right to inspection of documents referred to in plaint before written statement filed.

A defendant is entitled to have inspection of documents referred to in the plaint although he has not filed his written statement.

[F., 12 Ind. Cas. 506=256 P.L.R. 1911=185 P.W.R. 1911; R, 32 B. 152=9 Bom. L.R. 1084 (1085).]

IN chambers. Summons by defendant for inspection.

The plaintiff sued the defendant for Rs. 2,111, the amount alleged to be due from him for goods sold, &c.

In his plaint he stated, in the usual form, that he would rely on the documents specified in the list annexed thereto.

The defendant applied to the plaintiff for inspection of the documents mentioned in the said list. The plaintiff having declined to give inspection until the defendant filed his written statement, the defendant took out a summons calling on the plaintiff to show cause why he should not give the required inspection.

Chitnis, for the defendant, in support of the summons cited *Quilter v. Heatley* (1).

Inverarity, for the plaintiff showed cause.—We ought not to be required to give the defendant inspection until his written statement is filed. At present he denies our claim altogether. If he sees the letters we specify in our list he will probably alter his defence. The case of *Quilter v. Heatley* (1) does not apply. In that case the documents, of which inspection was sought by the defendant, were referred to in the pleadings, and made part of the [369] statement of claim. That is the ground of the decision of Jessel, M.R.

JUDGMENT.

FARRAN, J.—I think inspection must be given. Under the Code the plaintiff is required to mention the documents on which he will rely at the hearing. He has done so, and has mentioned the documents in question. There is, therefore, no difficulty as to the plaintiff knowing

* Suit No. 618 of 1893.

(1) 23 Ch. D. 42.

1894 what documents he is required to produce. I think, on the authority of
 MARCH 10. *Quilter v. Heatley* (1), the defendant is entitled to see them, although he
 has not yet filed his written statement.

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Attorney for the plaintiff :—Mr. *Shroff*.Attorneys for the defendant :—Messrs. *Chitnis, Motilal and Malvi*.*Summons made absolute.*

18 B. 369.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

CHENBASAPA AND ANOTHER (*Original Defendants*), *Applicants v.*
 LAKSHMAN RAMCHANDRA (*Original Plaintiff*), *Opponent*.*

[22nd June, 1893.]

Stamp Act (I of 1879), s. 34—Evidence—Hundis inadmissible under Stamp Act, but admitted by defendant—Admission.

In a suit brought upon two *hundis*, which were inadmissible in evidence for want of impressed stamps, the Judge allowed the claim, holding that the defendants' admissions in their written statement rendered it unnecessary to put the *hundis* in evidence.

Held, reversing the decree, that a *hundi* is "acted upon" where a decree is passed on it, whether proved or admitted, and that the Court cannot give effect to it in either case.

[F., 30 M. 386=17 M.L.J. 308 (309); 2 L.B.R. 103 (104); 7 Ind. Cas. 320=8 M.L.T. 251; R., 25 A. 509 (525)=23 A.W.N. 104; 18 B. 745 (747); 24 B. 360 (366); 11 C.L.J. 426 (430)=14 C.W.N. 703=6 Ind. Cas. 549; 17 C.L.J. 399=19 Ind. Cas. 848; 16 Ind. Cas. 33; 66 P.R. 1906=73 P.L.R. 1907; U.B.R. (1897—1901), 556; Cons., 12 Bom.L.R. 466 (470)=6 Ind. Cas. 903; 4 Ind. Cas. 1086=U.B.R. 1909, 4th Qr., Stamp, 36; 2 L.B.R. 333 (335); D., 18 B. 614 (616).]

APPLICATION under the extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882) against the appellate decree of J. L. Johnston, District Judge of Dharwar.

The plaintiff sued to recover from the defendants Rs. 276-4-0 alleged to be due on two *hundis*.

The defendants Chenbasapa and Basaya resisted the plaintiff's claim on the ground that the first *hundi* was satisfied by the substitution of another payable at sight, and that no money was received for the second.

[370] The Subordinate Judge rejected the claim, holding that the *hundis* not being stamped according to the provisions of art. 11, sch. I of the Indian Stamp Act (I of 1879), were inadmissible in evidence, and that no secondary evidence in support of the claim which was based on the *hundis*, could be taken under s. 65 of the Indian Evidence Act (I of 1872).

On appeal by the plaintiff urging, among other grounds, that he should have been permitted to adduce evidence of payment to the defendants otherwise than by the *hundis*, the District Judge reversed the decree and allowed the claim on the following grounds :—

"The defendant appears to admit his liability under the first *hundi*. He alleges also that Rs. 150 are due to him from the plaintiff on account

* Application No. 162 of 1892 under Extraordinary Jurisdiction.