

herited by Ulás from her husband became her *stridhan* in the larger sense in which the word is used, but assuming this to be the case, it does not appear that she could alienate it without sufficient cause, or that on her death it would descend otherwise than to her husband's heirs. We confirm the decree with costs.

*Decree confirmed.*

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## ORIGINAL CIVIL.

*Before Mr. Justice Bayley (Acting Chief Justice) and Mr. Justice Farran.*

**BHAWANJI HARBHUM (PLAINTIFF) v. DEVJI PUNJA (DEFENDANT).\***

*Stamp—Stamp Act I of 1879, Secs. 11 and 16—Hundi—Execution—Time of execution—Stamp affixed and subsequently cancelled—Evidence—Practice.*

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September 28:

Where a *hundi* was written by the defendant and stamped by him with a one-anna stamp which was left uncanceled and the *hundi* was subsequently taken by him to the plaintiff's son who received it from him and at the time of receiving it cancelled the stamp by writing the date across it,

*Held* that the *hundi* was duly stamped under sections 10 and 16 of the Stamp Act (I of 1879) and was admissible in evidence. If at the time of delivery, which completed its legal character, the *hundi* was stamped, and if the cancellation took place at that time as part of the same transaction, it was sufficient.

A deed is duly stamped if the stamp is affixed and cancelled at the time of execution, or if having been at any time previously affixed, it is cancelled at the time of execution.

When applied to a document the term 'execution' means the last act or series of acts which completes it. It might be defined as formal completion. The contract on a negotiable instrument until delivery is incomplete and revocable. Until delivery a *hundi* is not clothed with the essential characteristics of a negotiable instrument.

CASE stated for the opinion of the High Court under section 69 of the Presidency Small Cause Courts Act (XV of 1882) by C. W. Chitty, Chief Judge:—

"1. This was a suit brought by the plaintiff to recover from the defendant a sum of Rs. 914-2-9, the amount of principal and interest due on a *hundi* passed by the defendant to the plaintiff.

"The suit was filed as a summary suit, but on the defendant's application he was granted leave to defend.

"2. At the hearing the defendant admitted passing the *hundi* to the plaintiff, but pleaded no consideration, and denied liability

\* Small Cause Court Suit, No. 16254 of 1894.

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on other grounds. He also put the plaintiff to the proof of the *hundi*, which he maintained was inadmissible in evidence as being not duly stamped. The *hundi* was made payable on demand, and, therefore, chargeable with duty of one anna.

“3. The *hundi* was wholly written by the defendant. It was admittedly written by him at his place of business on the 23rd April, 1894, and at the time of writing, a one-anna adhesive stamp was affixed, but not cancelled by him. The *hundi* was taken by him the same day (but how long after the execution does not appear) to the plaintiff's son, who received it. The plaintiff's son subsequently wrote the English date in Gujarati character across the stamp. The plaintiff's son stated in evidence that he did so in the defendant's presence when the *hundi* was brought. I was not, however, satisfied that this was so, and on the evidence should be disposed to hold that the cancellation by the plaintiff's son was made at a subsequent date, probably for the purpose of this case. It was argued for the plaintiff that the time of execution of this *hundi* was not when the defendant wrote it, but when it was handed to the plaintiff's son, but I was of opinion that the *hundi* must be taken as having been executed when defendant wrote it.

“4. Under these circumstances I was of opinion that the provisions of sections 11 and 16 of the Stamp Act (I of 1879) had not been complied with; that the document, therefore, must be deemed to be unstamped; that under section 34 the document was inadmissible in evidence; and that the plaintiff's suit must fail.

“5. I accordingly gave judgment, dismissed the suit and certified Rs. 51 as the cost of the defendant's counsel. As the plaintiff's counsel had requested me to state the case for the opinion of their Lordships, I gave judgment contingent on such opinion.

“6. The sole question will be whether, on the facts as stated, the *hundi* is admissible in evidence.

“7. The plaintiff has deposited in Court Rs. 51 certified costs and Rs. 50 to meet the costs of reference.”

The following is a translation of the *hundi*, which was in Gujaráti :—

“23rd April 1894.

“Peace and prosperity, at the good place the seaport town of Bombay, to Shá the most illustrious Dewji, son of Punjam, written from the seaport town of Bombay by Shá Dewji, son of Punjam, his (salutations of) Johur do you be pleased to read ; to wit, from this place from the Bokhia Thákur Bhawanji Harbhun Rs. 900, namely, nine hundred, have been received in full ; do you pay the same *immediately on arrival of the hundi* ; do you pay the same in the name of (or) to Shá (a respectable person) on seeing his house, place of residence and abode ; the mark (is) this that I will write in the letter. Chaitra Vadya 3rd of Samvat 1950, the day of the week Monday, own hand-writing.”

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On the back was written :—

“The half being Rs. 450, do you pay the double thereof ; do you pay in all Rs. 900, namely, nine hundred in full.

Rs. 900.

“Shá Shri Dewji, son of Panjam.”

*Rivett-Carnac* for the plaintiff :—The *hundi* was duly stamped and should have been admitted in evidence. The time of its execution was the time at which it was delivered to the plaintiff by the defendant, and the plaintiff at that time cancelled the stamp which no doubt had been previously affixed. The plaintiff was the payee. It has never been decided whether a payee is entitled to affix and cancel a stamp, or to cancel a stamp already affixed if it has been left uncanceled. Further, I contend that the *hundi* is payable after sight and not on demand, and was, therefore, admissible on payment of a penalty. Counsel referred to the Stamp Act (I of 1879), sections 10, 11, 16, 18, 44, 62.

*Inverarity* for the defendant :—“Executed” means “signed.” Counsel referred to the English Stamp Act, 33 and 34 Vict., c. 97, sec. 54, cl. 2 ; sec. 53, cl. 2 ; Indian Stamp Act I of 1879, secs. 30, 31, 44 and 61 ; *Ralli v. Caramalli* <sup>(1)</sup>.

FARRAN, J. :—The facts in this case are not found with sufficient precision to enable us to give a categorical answer to the question submitted to us. Although paragraph I of section 11 of the Stamp Act provides that “whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed

(1) I. L. R., 14 Bom., 102.

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shall when affixing such stamp, cancel the same ;” we think that reading that paragraph in connection with paragraph 2 of the same section and with section 16, it is a fulfilment of the requirements of the law if the stamp is affixed and cancelled at the time of execution, or if having been at any time previously affixed it is cancelled at the time of execution.

The terms “executed” and “execution” are defined in the English Stamp Act (33 and 34 Vict., c. 97, sec. 2) to mean, with reference to instruments not under seal, “signed” and “signature.” In the case of instruments under seal the terms are left to their ordinary signification.

The Indian Stamp Act does not define them, probably because the practice of authenticating a document by signature is not so common in India as in England, and instruments are often (as in this case) completed without a formal signature at the end. The somewhat elastic term “execution” without definition is, therefore, employed. Now “executed” means completed (Wharton’s Law Lexicon, Title “Executed”). “Execution” is when applied to a document the last act or series of acts which completes it. It might be defined as formal completion. Thus execution of deeds is the signing, sealing and delivery of them in the presence of witnesses. Execution of a will includes attestation. In each class of instruments we have to consider when the instrument is formally complete.

Now the contract on a negotiable instrument is until delivery incomplete and revocable—*Chapman v. Cottrell*<sup>(1)</sup>; Negotiable Instruments Act (XXVI of 1881), sec. 46; Bills of Exchange Act, 1882, sec. 21 (45 and 46 Vict., c. 61). Until delivery a *hundi* is not clothed with the essential characteristics of a negotiable instrument. Accordingly we think that, if the instrument in question at the time of delivery (which formally completed its legal character) was stamped, and if the cancellation of the stamp took place at that time as part of the same transaction, it will be sufficient. The cancellation of the stamp apparently should be done by the person affixing it; but as it is a mere mechanical operation to prevent the stamp being used again, we think that it will be suffi-

(1) 34 L. J. Ex., 186.

cient if done by his directions, express or implied. Accordingly we do not consider that the cancellation of the stamp would be invalidated if done at the time of execution by the *payee* of the *hundi* with the authority of the *drawer*. The circumstances stated by the learned Judge do not bring the case within the provisions of section 44, to which we have been referred. That section simply provides that the person to whom a bill of exchange or promissory note chargeable with one-anna duty is presented unstamped for payment, need not refuse payment on that account, but may affix a one-anna stamp thereto and cancel it and then make payment. The word "payee" in the marginal note is manifestly a clerical error for "payer." It is a curious anomaly (if it be so) that the promissor in the case of an unstamped promissory note, who is the person who ought originally to have stamped it, should be at liberty to deduct the value of the stamp from the amount which he pays in discharge of his note.

We answer the question of the learned Judge by sending him a copy of this judgment, which will enable him to dispose of the case before him.

Plaintiff's attorneys:—Messrs. *Edgelow and Gulábchand*.

Defendant's attorneys:—Messrs. *Little & Co.*

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## ORIGINAL CIVIL.

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*Before Mr. Justice Candy.*

VITHULDA'S GOBER AND OTHERS, PLAINTIFFS *v.* THE BOMBAY AND PERSIA STEAM NAVIGATION COMPANY, DEFENDANTS.\*

*Shipping—Seaworthiness—Damage to goods by leakage while ship in dock—Bill of lading—Exception.*

The plaintiffs' goods were loaded in the defendants' steamer then lying in dock to be carried from Bombay to certain ports in East Africa. At the time of loading, the ship was apparently in a sound and seaworthy condition. Two days after the goods had been put on board, and when the ship was still in dock, it sprung a leak, and the water came into the hold and damaged the plaintiffs' goods. The ship was taken to the dry dock, the cargo was shifted, and the leak repaired. It appeared that the leak had arisen from the fact that one of the plates of the ship had been worn thin in one particular spot, so that when the cargo was put on board and the

\* Suit No. 540 of 1894.

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