

APPELLATE CIVIL.

Before Mr. Justice Chanutwarakar and Mr. Justice Aston.

1904.
March 10.

VIRBHADRAPA BIN ADRASHAPA JAVLI (ORIGINAL PLAINTIFF),
APPELLANT, v. BHIMAJI BALAJI SARAFF (ORIGINAL DEFENDANT 1),
RESPONDENT.*

Indian Stamp Act (Act I of 1879), section 11—Act II of 1899, section 12 (3)
—Adhesive stamp—Cancellation.

The mere drawing of two parallel lines without more over a receipt stamp affixed to an instrument does not have the effect of cancelling it "so that it cannot be used again" within the meaning of the Stamp Act.

SECOND APPEAL from the decision of Gangadhar V. Limaye, Joint First Class Subordinate Judge, with Appellate Powers, reversing the decree passed by V. D. Joglekar, Subordinate Judge of Saundatti.

The plaintiff sued to recover Rs. 567-15-3, being the loan on a *hundi* dated the 17th October, 1897. The suit was filed on the 17th October, 1900. The defendant denied all knowledge of the *hundi* and denied the claim.

The receipt stamp on the *hundi* was cancelled by some parallel lines drawn across it. The Subordinate Judge held that the stamp was not sufficiently cancelled and that the *hundi* was therefore inadmissible in evidence. On the 25th February, 1901, he held that the plaintiff could ignore the *hundi* and sue on the original loan.

The Subordinate Judge held that the loan by plaintiff was proved and passed a decree for Rs. 466-8-0.

On appeal the lower Appellate Court held that as the plaintiff was allowed to convert the original claim on a *hundi* into one for the recovery of a loan, on the 25th February, 1901, the plaintiff ought to be taken as presented on that day; and so taken the plaintiff's claim was barred by limitation.

The plaintiff appealed to the High Court.

S. R. Bakhale, for the appellant (plaintiff).

K. H. Kelkar, for the respondent (defendant).

CHANDAVARKAR, J. :—The suit was brought by the appellant to recover a debt for which a *hundi* was drawn by defendant No. 1 on the 17th December, 1897. In his plaint the appellant stated the cause of action to have arisen in consequence of the dishonour of the *hundi* by one Gopal Naik on whom it was drawn. The *hundi* bore a stamp of one anna with two lines drawn over it. The Subordinate Judge held that as these two lines drawn across the stamp were not “cancellation” within the meaning of the Stamp Act, the *hundi* was not duly stamped and no suit could lie on it. But he allowed the appellant to proceed with the suit on “the original loan,” and, having found the loan proved, passed a decree in his favour. In appeal, however, the First Class Subordinate Judge, with Appellate Powers, found that the claim was not in time and rejected it. In this second appeal Mr. Bakhle, pleader for the appellant, has contended, first, that the stamp borne by the *hundi* is “cancelled” as required by law. The case is governed by the Stamp Act of 1879, section 11 of which did not prescribe any particular form of cancellation, but merely provided that it should be so cancelled that the stamp “cannot be used again.” The Stamp Act of 1899 (clause 3 of section 12) points out as a guide how the cancellation may be effected. Substantially, there is no difference between the old and the new law. Now, the simple question is whether the mere drawing of certain lines without more over the stamp has the effect of cancelling it so that it “cannot be used again.” The answer to that question must, in our opinion, be in the negative. The law being that a used stamp cannot be used again the object of the Legislature in making cancellation obligatory is that the used stamp should bear on it some effective mark to show that it has been used. Two parallel lines drawn over a stamp are not sufficient to carry out that object, because mere lines would not be effective for the purpose in view. This view is in accordance with the observations of this Court in *Anandrao v. Duolatrao* ⁽¹⁾ though the actual decision there turned upon another point. In *S. A. Balli v. Caramalli Fazal* ⁽²⁾ the stamp on one of the documents sued on was cancelled “by a small portion of the first letter of the defendant’s signature consisting of a slightly curved line” and Sargent,

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(1) (1888) P. J. p. 361. (2) (1890) 14 Bom, 102 at p. 111.

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C. J., and Bayley, J., held that "whatever may have been intended by the small ink line upon the right side of the stamp in one of these documents, it did not effect such a cancellation of the stamp as is prescribed by section 11 of the Stamp Act." We fail to see any difference between "a small ink line" and "two lines." The latter is as ineffective as a mark of cancellation as the other.

Then the next question is, can the appellant be allowed to sue on "the original loan?" In our opinion the Subordinate Judge was right in allowing the suit to proceed as one brought to recover the original loan. The plaint states that the amount was lent and the defendant gave a *kundi* which, however, was dishonoured by the person on whom it was drawn, because he had no assets in his hands belonging to the defendant. It goes on to state that the cause of action arose not on the date the *kundi* was dishonoured, but on the 17th October, 1897,—*i.e.*, the date of the loan. Had the plaintiff intended to sue on the *kundi* alone, his cause of action would have arisen on the former date and he would have so stated it. But the date actually assigned for the cause of action is sufficient to show that the plaintiff substantially intended to sue and did sue on the loan independently of the *kundi* as well as upon the *kundi* itself. That being our view of the plaint, we must hold that the lower Appellate Court was wrong in treating the suit as not having been brought originally on the loan as well as the *kundi*. The lower Appellate Court having found the loan proved, we must reverse its decree and award to the plaintiff Rs. 567-9-3 from defendant No. 1 with costs throughout on the said defendant.

Decree reversed.