

(1879) 05 CAL CK 0002

Calcutta High Court

Case No: None

Bhoobunjoy Shaha
and Others

APPELLANT

Vs

Sonaka Chowdrain

RESPONDENT

Date of Decision: May 15, 1879

Citation: (1880) ILR (Cal) 311

Hon'ble Judges: Richard Garth, C.J; Prinsep, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

Who, after dismissing the defendant's appeal, gave the following judgment on the plaintiffs' cross-appeal: We have now considered the cross-objection made by the respondents (the plaintiffs) upon the ground that the Judge improperly compelled them to pay an additional sum for stamp-duty on the bond, and also a penalty of Rs. 1,000.

2. The loan in respect of which the bond was given was Rs. 30,000, but that sum was made repayable with interest by certain instalments, extending over twenty-two years. Thus the whole amount secured by the bond, principal and interest, was Rs. 76,000.

3. Although that sum of Rs. 76,000 consisted, no doubt, partly of interest and partly of principal, still, having regard to the nature of the transaction and to the fact that in case of non-payment of any instalment, interest would be payable on that instalment, the Judge considered that the bond should have been stamped for Rs. 76,000.

4. It was, however, under the advice of the Sub-Registrar, that the bond was stamped for Rs. 30,000, and, therefore, there was clearly no intention of evading the law. So the Judge allowed the additional stamp to be affixed, the plaintiffs paying a penalty of Rs. 1,000.

5. The stamp was affixed, and the penalty paid; but under protest by the plaintiffs, who appear to have been under the impression that the decision of the Judge was one which they could question in this Court upon appeal.
6. The decision, however, is not appealable as a decree, because it is not a decree in any sense, and even if it were one, it would be a decree not affecting the merits of the case, or the jurisdiction of the Court (see Act VIII of 1859, Section 363).
7. But then it was argued that it is an order as to a fine within the meaning of Section 365 of Act VIII of 1859. That section says, that "all orders as to fines or the levying thereof, &c., shall be subject to appeal."
8. But we think that Section 365 is not intended to apply to penalties under the Stamp Act. The fines to which it does apply are those which may be levied under the Code itself.
9. The penalty, which has been imposed upon the plaintiffs, could not be enforced by levy or in any other way. The only effect of the plaintiffs not paying it would have been that the bond could not have been admitted in evidence.
10. There is no doubt that, if the plaintiffs had refused to pay the penalty, and the bond had consequently been rejected, the plaintiffs, if the Judge was wrong, might have appealed to this Court upon the ground that he had committed an error of law in refusing to receive the document in evidence; and it certainly seems rather hard that, because the plaintiffs submitted to the judgment of the Court and paid the penalty, they should be without redress in a Court of appeal.
11. But such is the law, as we read it, and we consider that the only remedy which the plaintiffs have is to apply to the Revenue Board. We have had the opinion of that Board read to us. It seems to be of opinion that the bond was properly stamped in the first instance, and if that is so, there is no reason why the plaintiffs should not obtain from the Board the relief which we cannot give them here.
12. Any opinion of ours as to what is the proper stamp would of course be extra-judicial, because, for the reasons which we have already given, we think we have no right to entertain the question at all.
13. The cross-objection is, therefore, disallowed.