

[3 Mad. 251.]

APPELLATE CIVIL.

The 5th August, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Narayanan Chetti.....(Plaintiff) Petitioner

versus

Karuppathan.....(Defendant) Counter-Petitioner.*

Unstamped "promissory note" executed when the General Stamp Act, 1869, was in force, not admissible in evidence as a "bond" under Indian Stamp Act, 1879.

An instrument which comes within the definition of a promissory note in the General Stamp Act, 1869, and is not duly stamped according to that Act (which was in force at the date of its execution) cannot be admitted in evidence upon payment of penalty under Section 34 of the Indian Stamp Act, 1879,† on the ground that it falls within the definition of a bond in the latter Act.

The levy of a penalty authorized under proviso (1) of Section 34 of the Indian Stamp Act, 1879, implies a punishment for neglect in failing to affix the proper stamp at the time of execution.

[252] The word "chargeable" in the above proviso means chargeable under the Act in force at the date of the execution of the instrument.

THE facts and arguments in this case sufficiently appear in the following **Judgment** of the Court (INNES and MUTTUSAMI AYYAR, JJ.).

V. *Bhashyam Ayyangar* for Petitioner.

S. *Gopalachari* for Counter-Petitioner.

Innes, J.—The plaintiff sued, before the Subordinate Judge of *Madura* on the Small Cause side of the Court, upon an instrument which the Subordinate

*C. M. P. No. 144 of 1881 against the order of the Subordinate Judge of *Madura* (East), dated 3rd February 1881.

†[S. 34:—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Proviso.

Provided that :—

1st, any such instrument, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, shall, subject

Instruments admissible on payment of duty and penalty.

to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five Rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five Rupees, of a sum equal to ten times such duty or portion ;

or when ten times the amount of the proper duty or deficient portion thereof exceeds five Rupees, of a sum equal to ten times such duty or portion ;

2nd, nothing herein contained shall prevent the admission of any instrument in

And in certain criminal proceedings.

evidence in any proceeding in a Criminal Court other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or Chapter eighteen of the Presidency Magistrates' Act ;

3rd, when an instrument has been admitted in evidence, such admission shall not, except

Admission of instrument not to be questioned.

as provided in Section fifty, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.]

Judge considered inadmissible in evidence and dismissed plaintiff's suit. Application is now made to the High Court, under Section 622 of the *Civil Procedure Code*, asking the Court to call for the record of the suit and rescind the order of the Subordinate Judge on the ground that the instrument is not a promissory note as the Subordinate Judge supposed, but a bond, and, therefore, an instrument which may be admitted in evidence on payment of penalty. It was admitted by Mr. *Bhashyam Ayyangar*, who appeared in support of the application, that the instrument is a promissory note according to the definition of the *Stamp Act* of 1869, but he argued that, "to determine whether it was admissible in evidence, you must look to the Act in force at the date of presentation of the instrument, and that, in this view, the instrument was admissible in evidence." That Act provides in Section 34 that "No instrument, chargeable with duty, shall be admitted in evidence for any purpose by any person having by law or by the consent of parties authority to receive evidence or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped."

"Duly stamped" is, in Clause 10 of Section 3, defined to be "stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in *British India* when such instrument was executed or first executed," and it is admitted that the instrument was a promissory note and not duly stamped according to the law in force at the date of its execution. But Mr. *Bhashyam* argues that by the *Stamp Act* of 1879 the instrument is not a promissory note but a bond under Clause 4, Section 3, Sub-clause (b)—"any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself [253] to pay money to another." No doubt the instrument comes within this description and is, therefore, under the Act of 1879, a bond. The argument is then followed up thus: As this is a bond under the Act of 1879, the proviso to Section 34 admits of its being accepted in evidence.

The proviso runs—"Provided that, first, any such instrument, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, &c." Mr. *Bhashyam* says: "If the question is whether the document was duly stamped, you must look to the Act of 1869; but to see whether the document is admissible on payment of penalty, you must look to this proviso of the Act in force at the date of its presentation. The word 'chargeable' means chargeable under the Act of 1879, and, as this instrument is not, under the Act of 1879, chargeable with a duty of one anna only, and is not, under the Act, a 'bill of exchange' or a 'promissory note' but a 'bond,' it is admissible in evidence under the terms of the proviso."

I cannot accept this view. It appears to me that the levy of a penalty authorized under the proviso, on the admission of an insufficiently stamped document, implies a punishment for neglect in failing to affix the proper stamp at the time of *execution*. There would be no justification for the levy of a penalty on account of the increased stamp duty leviable under the Act in force at the date of *presentation* over that leviable under the Act in force at the date of *execution*.

The levy of a penalty shows that the date of *execution* is that which is regarded in the use of the word "chargeable," and that chargeable, therefore, means not chargeable under the Act of 1879, but chargeable under the Act in force at the date of execution. This, then, refers us to the interpretation clauses of the Act of 1869 to see what is the nature of the instrument.

Under the Act of 1869, it is clearly a promissory note and, as such, is not admissible in evidence, not being duly stamped. I would dismiss the application with costs.

Muttusami Ayyar, J.—I concur.

NOTES.

[See the case of (1882) 5 Mad. 394 F.B. where it was held that the proper stamp was that under the law at the time of execution while the penalty was to be levied according to the law at the time of enforcement.]

[254] APPELLATE CRIMINAL.

The 8th August, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE.

Sundriah.....(Prisoner) Appellant

versus

The Queen.*

Criminal Procedure Code, Section 473—Perjury, charge of—Contradictory statements—Trial before Sessions Court before which one of such statements was made—Conviction quashed.

A prisoner who had made certain contradictory statements on oath before a Magistrate and a Court of Sessions respectively was convicted by the same Court of Sessions on a charge, in the alternative, of giving false evidence either before the Magistrate or before the Court of Session.

Held that the Court was precluded by Section 473 of the Criminal Procedure Code from trying the charge.

THE facts of this case appear in the following **Judgment** of the Court :—

The prisoner was not represented.

Turner, C. J.—The appellant has been convicted on a charge of having given false evidence in the alternative, either before the Second-class Magistrate or the Court of Session, the statements made on each of these occasions, and on which perjury is alleged, being directly contradictory the one of the other.

Although the Judge has expressed his opinion, and probably on good grounds, that the statement made to the committing Magistrate was the one of the two statements which was false, there was no amendment of the charge originally framed, and on that the appellant was convicted. He pleads in appeal, *inter alia*, that the Sessions Court was precluded by the terms of Section 473, *Code of Criminal Procedure*, from trying the charge.

I must allow the validity of the plea. I set aside the conviction and commitment and order that the appellant be tried by a Magistrate in the district having first-class powers. If he should be again convicted and sentenced, the Magistrate will take into account the imprisonment he has already suffered.

NOTES.

[See (1892) 14 All. 354 where previous authorities are collected.]

* Appeal No. 328 of 1881 against the sentence passed by C. G. Plumer, Sessions Judge of North Arcot, dated 4th July 1881.