

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

CHANNAMMA AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

AYYANNA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1892.
October 3.

Contract Act—Act IX of 1872, s. 2—Proposal—Promissory note—Stamp.

A letter, reciting a request for a loan, calling on the addressee to pay the amount to the bearer of the letter, and continuing "this sum I shall repay with interest . . . and get back this letter: I request you will not neglect to pay the amount on the strength of this letter," is a promissory note and not a mere proposal for a loan.

SECOND APPEAL against the decree of S. Subbayar, Subordinate Judge of South Canara, in appeal suit No. 45 of 1890, confirming the decree of S. Raghunathayya, District Munsif of Karkal, in original suit No. 216 of 1889.

Suit for principal and interest due on account of money lent by the plaintiff's husband, deceased, to the defendant. The plaintiff tendered in evidence a letter to her deceased husband from the defendant, of which the material portion was the following:

"I personally asked you for a loan of Rs. 500 in order to pay off the debt due by me to Cherdappa Shanbhoga on the mortgage of the property I purchased from him; pay the sum to the bearer of this letter, Narayana, on my account and obtain a receipt from him. This sum I shall repay with interest at 12 per cent. per annum within 30th Phalguna of this year and get back this letter. I request you will not neglect to pay the amount on the strength of this letter, 8th Bhadrapada."

It bore an unstamped receipt endorsed in it as follows:

"Received on account of Ayyanna into my hands according to his letter, Rs. 500-0-0. 9th Bhadrapada Shudha."

The letter was not stamped and the District Munsif referring to *Pothi Reddi v. Velayadasivan*(1), held that it was a promissory note and for that reason inadmissible in evidence, and he dismissed the suit. The Subordinate Judge confirmed his decree.

* Second Appeal No. 1859 of 1891.

(1) I.L.R., 10 Mad., 94.

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The plaintiff preferred this second appeal.

Pattabhirama Ayyar for appellants.

Narayana Rau for respondent No. 2.

JUDGMENT.—It is argued that the letter, exhibit A, contains merely a proposal to borrow and does not amount to an unconditional undertaking to pay and we have been referred to a case *Dhondbhat Narharbhat v. Atmaram Moresbhar*(1). That case is not in point, because the document did not contain, as exhibit A does, any words indicative of the writer's intention, that if the addressee consented to make the loan the letter itself should operate as a security for repayment. The use of the words "I will obtain back this letter" and "you will lend on the strength of this letter," indicate the intention of Ayyanna that the document should be retained by plaintiff's husband, if he sent the money as an unconditional undertaking to pay back the money on a certain date. The case is similar to one, in which a promissory note is sent along with a letter applying for a loan with the intention that the promissory note should be retained if the loan is made. The mere fact that the intention that the document should operate as a promissory note only in case the loan is made does not deprive exhibit A of its character as such when the loan is actually made. In *Nandan Misser v. Chatterbati*(2) the use of the words 'take back' were held sufficient to indicate an intention that the document should operate as a security for repayment. We see no reason to interfere with the discretion of the Courts below as to costs.

Both second appeal and memorandum of objections are dismissed with costs.

(1) I.L.R., 13 Bom., 669.

(2) 13 B.L.R., App., 33.
