

Bench case we are of opinion that there was an absolute grant by Government to the widow and that the appellant cannot question her alienations. There was no reason why Government should grant her only a widow's estate, rather than an absolute estate.

DHARANI-
PRAGADA
DURGAMMA
v.
KADAMBARI
VIRRAZU.

We confirm the decree of the Lower Appellate Court and dismiss this second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

TIRUPATHI GOUNDAN (PLAINTIFF), APPELLANT,

1897.
March 30.

v.

RAMA REDDI (DEFENDANT), RESPONDENT.*

Negotiable Instruments Act—Act XXVI of 1881, s. 4, promissory note.

A debtor signed and delivered to his creditor an unstamped document as follows:—"The account executed on . . . by . . . to . . . The amount which I have this day received from you in cash is Rs. 700. This sum I am bound to pay you. Therefore, adding to this sum interest at 8 annas per cent. per mensem, I am liable to pay. This is the account in this manner executed with my consent":

Held, that the document was not a promissory note and was admissible in evidence.

SECOND APPEAL against the decree of W. J. Tate, District Judge of Salem, in Appeal Suit No. 47 of 1895, affirming the decree of K. Krishna Ayyangar, District Munsif of Krishnagiri, in Original Suit No. 56 of 1894.

The plaintiff sued to recover money lent. One of the pleas raised was that the instrument relied upon by the plaintiff in proof of the loan was really a promissory note, and not having been stamped was inadmissible in evidence.

The translation of the instrument in question in paragraph 2 of the judgment of the District Judge was as follows:—"The account executed on . . . by . . . to . . . The amount which I have this day received from you in cash is Rs. 700. This sum I am bound to pay you. Therefore, adding to this (sum)

* Second Appeal No. 12 of 1896.

TIRUPATHI
GOUNDAN
v.
RAMA REDDI.

"interest at . . . , I am liable to pay. This is the account in
"this manner executed with my consent."

The District Munsif upheld his plea and ruled that the plaintiff was not entitled to adduce further evidence of the loan, and he accordingly dismissed the suit.

The District Judge on appeal affirmed his decision.

Plaintiff preferred this second appeal.

Sivasami Ayyar for appellant.

Mr. E. B. Powell for respondent.

JUDGMENT.—The question is whether the document of the 2nd February of 1891 relied on by the plaintiff is a promissory note within the meaning of section 4 of the Negotiable Instruments Act, 1881, or a mere acknowledgment of liability falling under Article 1 of Schedule 1 of the General Stamp Act, or an agreement.

If it is a promissory note, the suit must fail as rightly decided by the Lower Courts. The correct translation of the document is set out in paragraph 2 of the judgment of the Lower Appellate Court. The only question is whether the words therein "I am liable to pay" can be held to be an "undertaking" to pay within the meaning of section 4 of the Act. The construction depends on the actual words used rather than what their effect may be as regards the rights of the parties. Examining the document in this light, we are of opinion that the words do not amount to an undertaking to pay, but constitute only an acknowledgment of liability to pay.

The words "I am liable to pay" do not, in fact, mean anything more than the previous words in the document "I am bound to pay" which clearly do not constitute an undertaking to pay.

We must, therefore, hold that the document is not a promissory note and the plaintiff's claim as a suit for money lent is sustainable.

We set aside the decrees of the Courts below and remand the suit for disposal according to law. Costs hitherto incurred will abide and follow the result.