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party to the scheme suit and the plaintiff may have been seriously prejudiced thereby. In any case his inclusion as a party would have finally decided his right to the trusteeship one way or the other. The erroneous order of the District Judge cannot however affect the plaintiff's right to sue and although it may be prejudicial to the plaintiff it cannot give him a right to sue which he otherwise would not have had. If plaintiff's present suit were decreed it would have the effect of very materially altering a scheme framed by the Court without impleading the other persons interested in the scheme and would be as inequitable towards them as the refusal to entertain the plaintiff's suit is to him. The plaintiff's only remedy, if any, would seem to be to induce the Collector to ask for a modification of the Court's scheme by taking action under section 539 or rather section 92 of the new Civil Procedure Code We therefore think that the plaintiff's suit is not maintainable in view of the scheme settled in Original Suit No 10 of 1903 and would in allowance of the Appeal dismiss this suit with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Phillips.

1911. September 21, October 5 and 6.

KARUTHAPPA ROWTHAN (PLAINTIFF), APPELLANT,

v.

BAVA MOIDEEN SAHIB (DEFENDANT), RESPONDENT.*

Promissory-note or acknowledgment—Deed, construction of—Unconditional undertaking and the document styled as promissory-note.

It is no doubt true that the question whether an instrument is a promissory-note or not should be judged by the words used, and that the instrument must contain in words an unconditional undertaking to pay a sum of money, and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money.

Held, that the following document wherein the executant not only made an unconditional undertaking to pay but also styled it a promissory-note was a promissory-note and not a mere recital of a liability, and as such was not admissible in evidence for want of a proper stamp.

* Second Appeal No. 478 of 1910.

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"Promissory-note executed on . . . in favour of . . . by . . .

In the matter of the purchase of piece-goods by me from your shop on this date, the sum found due by me as per patty (list) is Rs. 600 . . . which sum I promise to you or to your order on demand with interest at 1¼ per cent. To this effect . . . "

Tirupathi Goundan v. *Rama Reddi* [(1898), I.L.R., 21 Mad., 49], *Govind* v. *Balwantrao* [(1898) I.L.R., 22 Bom., 986], *Horne* v. *Redfearn* [(1838) 4 Bing. (N.C.), 433] and *White* v. *North* [(1849) 3 Exch. Reports, 689], distinguished.

Morris v. *Lee* (92 E.R., 409), referred to.

SECOND APPEAL against the decree of F. H. HAMNETT, the District Judge of Madura, in Appeal Suit No. 523 of 1909, presented against the decree of R. ANNASWAMI AYYAR, the District Munsif of Dindigul, in Original Suit No. 59 of 1909.

This was a suit on the above document executed in the Native State of Mysore to which was affixed a one-anna stamp of the Native State of Mysore, by the defendant to one M.R. who after coming into British India endorsed it to the plaintiff, without affixing a British one-anna stamp. The document bore only the Mysore stamp. The Munsif dismissed the suit holding that it was a promissory-note and that it was not duly stamped as soon as it came into British India into the hands of the plaintiff's transferor. Before the District Judge, on appeal, it was contended that it was not a promissory-note, but only a mere recital of a liability.

The District Judge holding it to be a promissory-note dismissed the appeal. Hence this Second Appeal by plaintiff.

The Hon. the Advocate-General, *T. R. Ramachandra Ayyar* and *T. R. Krishnaswami Ayyar* for the appellant.

T. Prakasam, M. H. Hakim and *K. N. Gopaul* for the respondent.

SUNDARA AYYAR AND PHILLIPS, JJ.

JUDGMENT.—We are clearly of opinion that Exhibit A is a promissory-note. It is called a promissory-note in the phraseology of the document. The executant states that he agreed on the date of the promissory-note to pay the amount of Rs. 600 found due on demand. The argument that it is not a promissory-note is based on the form of the sentence, which is that the amount which the executant agreed to pay on demand for the price of cloths purchased by him on the date of the document was Rs. 600; but we have got the important fact that the document begins with saying that it was the promissory-note executed by the executant in favour of the appellant's transferor. In

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other words we may say that not only does the document say that the amount which the executant agreed to pay on demand was Rs. 600, but that Exhibit A was a promissory-note for it. It appears to us to be impossible to hold that such an instrument can be read otherwise than as a promissory-note. It is no doubt true that the question whether an instrument is a promissory-note or not should be judged by the words used, and that the instrument must contain in words an unconditional undertaking to pay a sum of money, and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money. Judging this instrument by this test, we have no hesitation in saying that the executant unconditionally promised by it to pay the amount of Rs. 600 to the appellant's transferor.

Several cases have been cited by the learned Advocate-General, viz. *Tirupathi Goundan* v. *Rama Reddi*(1), *Govind* v. *Balwantrao*(2), *Horne* v. *Redfearn*(3) and *White* v. *North*(4), in support of his argument. But in all these cases there was no language of promise to pay a sum of money. There was an acknowledgment of receipt of money or of indebtedness and an admission that the executant was accountable to the other party. In one case the document said "accountable for the amount with interest." In another case it said "accountable for the money so many months afterwards." The important distinction between them and the present case is that there was no promise in terms to pay. On the other hand in another case cited by the learned Advocate-General, *Morris* v. *Lee*(5), the executant promised to be accountable and the instrument was held to be a promissory-note. Here not only has the executant promised to pay but he has said that the instrument is his promissory-note for the amount due. We dismiss the Second Appeal with costs.

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(1) (1898) I.L.R., 21 Mad., 49. (2) (1898) I.L.R., 22 Bom., 986.
(3) (1838) 4 Bing. (N. C.), 433. (4) (1849) 3 Exch. Reports, 689.
(5) 92 E.R., 409.