APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

1913. November, 7.

MUTHU SASTRIGAL (PLAINTIFF—PETITIONER), APPELLANT,

v.

VISVANATHA PANDARASANNADHI (ADHINAKARTHAR OF SRI VADARANYESWARASWAMI TEMPLE AT VADARANYAM (DEFENDANT—RESPONDENT), RESPONDENT.*

Varthamanam or letter—Not stamped—Unconditional undertaking to pay—Promissory note, inadmissible in evidence—Evidence Act (I of 1872), sec. 91—Suit on original liability, not maintainable.

A *varthamanam* or letter which says, "Amount of cash borrowed of you by me is Rs. 350. I shall in two weeks' time, returning this sum of Rupees three hundred and fifty with interest thereon at the rate of Rupee one per cent. per month, get back this letter," amounts to an unconditional undertaking to repay borrowed money and is therefore a promissory note and not merely an offer to borrow or an acknowledgment of indebtedness.

Bharata Pisharodi v. *Vasudevan Nambudri* (1904) I.L.R., 27 Mad., 1 (F.B.), distinguished.

Tirupathi Goundan v. *Rama Reddi* (1898) I.L.R., 21 Mad., 49, doubted.

When such a document is inadmissible for want of a stamp, to allow a suit as one on "account for money had and received," concealing the real contract of loan which had been reduced to the form of a document would nullify section 91 of the Indian Evidence Act (I of 1872).

Pothi Reddi v. *Velayudasivan* (1887) I.L.R., 10 Mad., 94, followed.

Chinnappa Pillai v. *Muthuraman Chettiar* (1911) 9 M.L.T., 281 and *Mallaya* v. *Ramayya* (1911) 21 M.L.J., 462, approved.

Krishnaji v. *Rajmal* (1900) I.L.R., 24 Bom., 360 and *Baij Nath Das* v. *Salig Ram* (1912) 16 I.C., 33, dissented from.

Doctrines of English Courts of Equity are not to be imported into the construction of such a document.

Per SPENCER, J.—The mere use of the word *varthamanam*, instead of promissory note, will not deprive the document of its real character of promissory note if its terms show that it is such.

APPEAL under clause (15) of the Letters Patent against the judgment of MILLER, J., dated 19th March 1913, in Civil Revision Petition No. 171 of 1912, preferred to the High Court against the decree of J. R. GNANIYAR NADAR, the Temporary Subordinate Judge of Negapatam, in Small Cause Suit No. 1239 of 1911.

The following is the judgment of MILLER, J., in *Civil Revision Petition* No. 171 of 1912 :—

* Letters Patent Appeal No. 66 of 1913.

"MILLER, J.—The plaintiff in the witness box said that the defendant asked for a loan; he undertook to lend if a letter was given: accordingly he lent the money and got the letter.

"The letter is, I have no doubt, a promissory note, and I cannot distinguish the case from *Somasundaram* v. *Krishnamurti*(1) which binds me.

"The petition is dismissed with costs."

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MILLER, J.

The plaintiff thereupon preferred this Letters Patent Appeal.

The facts of the case appear from the judgment of SADASIVA AYYAR, J.

S. Varadachariyar for the petitioner.

K. S. Jayarama Ayyar for *G. S. Ramachandra Ayyar* for the respondent.

SADASIVA AYYAR, J.—The plaintiff is the appellant in this Letters Patent Appeal. He sued on the strength of a letter which has been held to be inadmissible in evidence and his suit has been dismissed by all the Courts. I shall now briefly refer to the arguments advanced by his learned vakil and to some of the cases quoted during those arguments.

SADASIVA AYYAR, J.

In the cases in the foot-note to *Queen-Empress* v. *Somasundaram Chetti*(2), and in *Bharata Pisharodi* v. *Vasudevan Nambudri*(3), relied on by him the documents themselves showed that they were not to be treated as vouchers or securities unless the persons to whom the letters were sent gave loans as requested in the letters. As said in *Bharata Pisharodi* v. *Vasudevan Nambudri*(3), "There is no unconditional undertaking on the face of the document to pay the money." In the present case the so-called *varthamanam* or letter says, "Amount of cash borrowed of you by me is Rs. 350. I shall in two weeks' time, returning this sum of rupees three hundred and fifty with interest thereon at the rate of one rupee per cent. per month, get back this letter."

It is clearly an unconditional undertaking on the face of this document to repay borrowed money, and it is therefore a promissory note and not merely an offer to borrow or an acknowledgment of indebtedness.

As regards *Tirupathi Goundan* v. *Rama Reddi*(4), the language of the document in question in that case was quite

(1) (1907) 17 M.L.J., 126. (2) (1900) I.L.R., 23 Mad., 155 at pp. 156 and 157.
(3) (1904) I.L.R., 27 Mad., 1 at p. 3 (F.B.). (4) (1898) I.L.R., 21 Mad., 49.

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different and very vague. Even so, I wish (with the greatest respect to the Judges who decided it) to be permitted to reserve my opinion if a document similarly worded happens to come, before me for interpretation.

I therefore agree with the Lower Courts that the *varthamanam* sued on is a promissory note and is inadmissible in evidence as not duly stamped.

As regards the contentions that, apart from the promissory note, there was an independent obligation implied from the receipt of the plaintiff's money by the defendant and that that obligation could be established by proof of that fact, I think we are bound by the decisions in *Pothi Reddi* v. *Velayudasivan*(1), and *Somasundaram* v. *Krishnamurti*(2). It is contended that *Pothi Reddi* v. *Velayudasivan*(1) is not good law, as the learned Judges misunderstood an observation of GARTH, C.J., in *Sheikh Akbar* v. *Sheikh Khan*(3), on which they relied in support of their position. I am not satisfied that the learned Judges did so misunderstand *Sheikh Akbar* v. *Sheikh Khan*(3); and even if they misunderstood *Sheikh Akbar* v. *Sheikh Khan*(3) they give independent reasons as follows:—

"It is a necessary condition to every written contract that the terms should be orally settled before they are reduced to writing, and to hold when such a contract has been reduced to writing, that a plaintiff can take advantage of the absence of a stamp on the promissory note to sue at once for the return of money which he may have contracted to lend for a fixed period, would entirely defeat the provisions of s. 91 of the Evidence Act."

Whatever may be the views of English Courts or even of the other High Courts [see the cases collected in *Baij Nath Das* v. *Saligram*(4)], I feel bound by *Pothi Reddi* v. *Velayudasivan*(1) not only because it has never been dissented from, but because the reasons above given appeal to my mind (if I may say so with respect) as very cogent. The contract in the case of a loan and a simultaneous promissory note has been reduced to writing in the form of the note which contains the definite terms of the contract, and we cannot, in my opinion, resort to inconsistent

(1) (1887) I.L.R., 10 Mad., 94 at p. 97.
(2) (1907) 17 M.L.J., 126.
(3) (1881) I.L.R., 7 Calc., 256.
(4) (1912) 16 I.C., 33.

or consistent implied contracts in such cases simply because the contract as entered in the promissory note cannot be admitted in evidence. Not only has *Pothi Reddi* v. *Velayudasivan*(1) not been dissented from, but it has, without disapproval, only been distinguished in *Ramachandra Rao* v. *Venkataramana Ayyar*(2) and *Yarlagadda Veera Ragavayya* v. *Gorantla Ramayya*(3), while it has been expressly followed in *Chinnappa Pillai* v. *Muthuraman Chettiar*(4) and *Mallaya* v. *Ramayya*(5).

To import the doctrines laid down in English cases about vague obligations to repay arising out of equity and not out of contract, or about obligations which can be enforced if the plaintiff skilfully draws up his plaint as one on account for money had and received concealing the real contract of loan which had been reduced to the form of a document is, it seems to me, merely trying to nullify section 91 of the Indian Evidence Act.

I do not intend to say that, if there is a contractual or other definite completed obligation capable of proof, prior in date to the invalid promissory note, the plaintiff cannot sue on that prior independant obligation. But to treat the money paid at the very time of the execution of the promissory note inadmissible in evidence, as giving rise to an independant contractual or other obligation seems to me to be inadmissible.

I would therefore dismiss the appeal with costs.

SPENCER, J.—I read the plaintiff's unfiled exhibit as containing a promise to pay. This promise, though not a promise to pay on demand or to order, is an unconditional promise. There are no signatures of attesting witnesses so as to convert the document into a bond.

SPENCER, J.

The mere use of the word "*varthamanam*" instead of promissory note will not deprive the document of its character of promissory note, if its terms show that it is such.

The execution of the document and the payment of the money may be treated as practically simultaneous, as the document was not made over to the plaintiff until it was ascertained that he was prepared to make the advance. It is all part of the same transaction.

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(1) (1887) I.L.R., 10 Mad., 94. (2) (1900) I.L.R., 23 Mad., 527.
(3) (1906) I.L.R., 29 Mad., 111. (4) (1911) 9 M.L.T., 281.
(5) (1911) 21 M.L.J., 462.

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It is argued that the plaintiff may have a separate cause of action to fall back up on the original liability of the debtor and to sue the defendant for money had and received.

This is the view taken in *Krishnaji* v. *Rajmal*(1), and more recently in *Baij Nath Das* v. *Salig Ram*(2) where the matter received full discussion.

The trend of Madras decisions is however different. See *Pothi Reddi* v. *Velayudasivan*(3), the same principle having been followed in *Chinnappa Pillai* v. *Muthuraman Chettiar*(4), and *Mallaya* v. *Ramayya*(5).

I am not prepared to dissent from the view taken repeatedly by this High Court by various learned Judges. I therefore concur in dismissing this Letters Patent Appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

1913. November 10.

C. FAKEERAPPA (REPRESENTED BY HIS PARTNER K. HANUMANTAPPA) AND FOUR OTHERS (COUNTER-PETITIONERS), APPELLANTS IN BOTH,

v.

M. THIPPANNA AND TWO OTHERS (CLAIMANT AND PARTY—RESPONDENTS), RESPONDENTS.*

Railway receipt—Mercantile document of title, pledge of—Local custom—Charge—Holder thereof—Provincial Insolvency Act (III of 1907), sec. 16, cl. 3.

A railway receipt is a mercantile document of title to goods and lawful possession as pledgee of such receipt enables the holder by virtue of local custom to get possession of the goods from the carrier, and the insolvents' right to get possession under section 16, clause (3) of the Provincial Insolvency Act (III of 1907) ceases with the pledge.

Amarchand & Co. v. *Ramdas* (1913) 15 Bom. L.R., 890, followed.

APPEAL against the order of W. W. PHILLIPS, the District Judge of Bellary, in Insolvency Applications Nos. 388 and 389 of 1908 in Insolvency Petitions Nos. 9, 10 and 11 of 1908.

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(1) (1900) I.L.R., 24 Bom., 360. (2) (1912) 16 I.C., 33.
(3) (1837) I.L.R., 10 Mad., 94. (4) (1911) 9 M.L.T., 281.
(5) (1911) 21 M.L.J., 462.

* Appeal Against Orders Nos. 233 and 234 of 1911.