

APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., the Chief Justice,
Mr. Justice Sankaran Nair and Mr. Justice Tyabji.

THE SECRETARY TO THE COMMISSIONER OF SALT,
ABKĀRI AND SEPARATE REVENUE (PETITIONER),

1913.
March 7.

v.

THE SOUTH INDIAN BANK, LIMITED, TINNEVELLY
(COUNTER-PETITIONER).*

Stamp Act (II of 1899), sec. 57, reference under—Article 5, schedule I—Agreement or memorandum of agreement, meaning of—Proposal or offer in writing—Parol acceptance—Whether proposal or offer in writing requires to be stamped—Advance of loan or written declaration by a party as to his property—Entry in register of the declaration—Whether stamp necessary.

Where it appeared on the evidence as to the course of business of a bank, that the bank advanced loans on promissory notes payable on demand or otherwise, but before advancing money it required the borrower to make a declaration in the confidential register in the form thereto annexed as to the property in his possession and to sign the same,

Held, that the entry of the declaration in the register was not an "agreement" or a "memorandum of an agreement" which is required to be stamped under article 5 of the schedule I of the Indian Stamp Act (II of 1899).

Assuming that on the signing of the declaration there was "a proposal" or an "offer," a written proposal or a written offer does not become subject to stamp duty by reason of a subsequent acceptance which is not in writing.

Carlill v. The Carbolic Smoke Ball Company (1892) 2 Q.B., 484, *Chaplin v. Clarke* (1851) 4 Ex. Rep., 403 and *Clay v. Crofts* (1851) 20 L.J., C.L., 861, followed.

Quere: Whether the entry in the register amounted to a proposal or offer in writing.

CASES stated under section 57 of the Indian Stamp Act (II of 1899), by H. H. F. M. TYLER, the Acting Secretary to the Commissioner of Salt, Abkāri and Separate Revenue.

This is a reference by the Board of Revenue under section 57 of the Indian Stamp Act (II of 1899) to the High Court for a decision on the question of stamp duty on certain entries in the confidential register maintained by the South Indian Bank, Limited, Tinnevely. The circumstances under which the entries

* Referred Case No. 16 of 1911.

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were recorded in the Bank's register were stated as follows:—
 "The Bank grants loans generally on promissory notes payable on demand or otherwise. Before advancing money, it requires the borrower to make a declaration in the confidential register in the form thereto annexed and to sign it. Each declaration consists of two parts. The first part gives the description and the value of the borrower's property with the existing liability thereon while the second part contains an unconditional undertaking not to further encumber his property until he repays the loan which he proposes to obtain from the Bank." The Collector of Tinnevely, before whom the documents in question (namely, the confidential register above referred to) were produced in the course of an income-tax enquiry, impounded the documents as they were considered to be in the nature of agreements liable to stamp duty under article 5, schedule I of the Indian Stamp Act (II of 1899). The Board of Revenue were also of the same opinion, but as the point was not free from doubt it sought for an authoritative ruling from the High Court under section 57 of the Indian Stamp Act (II of 1899).

C. F. Napier, the Government Pleader, for the petitioner.

M. D. Devadoss, counsel, for the counter-petitioner.

WHITE, C.J.

WHITE, C.J.—The only evidence to which our attention has been invited as to the course of business of the Bank is the statement contained in the letter of the Secretary to the Board of Revenue. In that letter, the course of business is thus described: "The bank grants loans on promissory notes payable on demand or otherwise. Before advancing money, it requires the borrower to make a declaration in the confidential register in the form thereto annexed and to sign it." A translation of the form to which the Secretary refers is annexed to the letter. Reading the entries in the register by the light of the statement by the Secretary as to the course of business, I am unable to say that the entries in the register show that the signing of the declaration, the execution of the note, and the advance of money by the bank were one and the same transaction. I express no opinion as to whether, if it appeared on the face of the entries that the signing of the declaration, the execution of the note and the advance of the money were one and the same transaction, the entries would require to be stamped as an agreement or a memorandum of an agreement.

For the purposes of the question we have to consider, I am quite prepared to accept the proposition that, if the document in question is evidence of an agreement, I do not say 'of an agreement and the terms thereof', but if the document is evidence of an agreement—evidence that the minds of the parties when the document was signed were *ad idem* with regard to the particular matter—in that case the document would require to be stamped. Now can we infer from the statement as to the course of the business and the entries in the register that, when the declaration was signed, the minds of the parties were *ad idem* with regard to the matter in question? It has to be observed that, according to the course of business as stated by the Secretary, before the money is advanced the borrower is required to make a declaration. The Government Pleader has suggested that that implies that, if the declaration has been made, the Bank will, as a matter of course, make the advance. I do not think that that implication necessarily arises.

Now can it be said that there is evidence of an agreement which imposes an obligation of any kind on the Bank? I think not. I do not think it can be said, reading these entries, that, on the making of the declaration by the borrower, the Bank were under any obligation, forthwith or within a reasonable time thereafter, to advance money. What is it on which the suggestion is based that we can read in these entries an agreement imposing an obligation on the Bank? The Government Pleader concedes that the only words in the register are the words "Hundi No. 179." We have looked into the original register, and we find that it is arranged in a tabular form. The first column is headed "Hundi No. ". The second column is headed "Date." The first entry in the first column is "179," that is, there is a reference to a hundi of which the number is 179. Then as regards the date in the original register, the year and month are not given, but the day of the month which is stated appears to be the date on which the declaration was signed. Whether that is intended to be the date of the hundi or whether it is intended to be the date of the making of the declaration, is not clear in the original register. Now, we are invited, on the strength of this reference to a *hundi* (amount unspecified), to refer an agreement by the Bank to make an advance on the signing of the declaration and to infer the fact that an advance

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was made. I do not think that, on such evidence, we should be warranted in making that inference,—at any rate, for the purpose of deciding whether, under a fiscal enactment, this particular document is one which required to be stamped. Then can it be said that there is an agreement which imposes any obligation on the borrower? It had been suggested that it is an undertaking by the borrower that, in consideration of the Bank advancing money, he undertakes not to encumber the property mentioned in the register. I cannot read the entry in the register as amounting to an agreement such as that. It seems to me so far as I can see from what appears within the four corners of the document,—I do not know whether we are entitled to go outside it—it seems to me that what the entry really represents is a statement by the would-be-borrower of the property of which he is in possession in order that the Bank might be informed as to whether he is a man of substance and an undertaking by the would-be-borrower that, if the Bank advanced him money on his promissory note, he would not encumber the property mentioned in the declaration until the Bank debt was discharged: and that the entries were made, not for the purpose of recording an existing agreement between the parties or any memorandum of an existing agreement, but for the purpose of enabling the Bank to decide whether in the course of their business, they would make the advance which was contemplated at the time the declaration was signed. No doubt, the execution of a promissory note was in the contemplation of the parties at the time. No doubt, the coming into existence of a Bank debt, was in the contemplation of the parties at the time. But for the reasons I have stated, I do not think that this document can be treated either as an agreement or as a memorandum of an agreement. The Government Pleader, suggested that, ‘until the Bank debt is discharged’ should be read as indicating that the debt had already been incurred by the advance of money on the promissory note at the time the declaration was signed. That seems to me to be inconsistent with the statement of the course of business by the Secretary that, before advancing money, the Bank requires the borrower to make a declaration in the form prescribed.

For the purposes of the further argument that the Government Pleader addressed to us I will assume that on the signing of the declaration there was a “proposal” or an “offer.” The

Government Pleader has referred to several authorities with regard to the question as to what is sufficient by way of note or memorandum for the purpose of satisfying the 4th section of the English Statute of Frauds. There can be, I think, no doubt that there is a considerable divergence between the line of authorities with reference to section 4 of the Statute of Frauds and the other authorities to which our attention has been called, the authorities under the stamp law. It seems to me that, if there be any conflict between the principles held applicable in these two lines of authorities, we ought to follow the decisions, in connection with the matter which is now before us, that is, the stamp law. If we turn to the authorities under the stamp Acts, I think it may be said to have been established that a written proposal or a written offer does not become subject to stamp duty by reason of subsequent acceptance which is not in writing. In *Carlill v. Carbolic Smoke Ball Company*(1), HAWKINS, J., lays down the law thus: "No document requires an agreement stamp unless it amounts to an agreement, or a memorandum of an agreement. The mere fact that a document may assist in proving a contract does not render it chargeable with stamp duty; it is only so chargeable when the document amounts to an agreement of itself or to a memorandum of an agreement already made. A mere proposal or offer until accepted amounts to nothing. If accepted in writing, the offer and acceptance together amount to an agreement; but, if accepted by parol, such acceptance does not convert the offer into an agreement nor into a memorandum of an agreement, unless, indeed, after the acceptance, something is said or done by the parties to indicate that in the future it is to be so considered;" and the learned Judge cites several English decisions. Among the authorities which he cites is *Chaplin v. Clarke*(2). In that case, the action was brought by an allottee of shares in a joint-stock company to recover the amount of deposits paid by him. The question arose as to whether a certain document required a stamp. MAULE, J., in the course of the argument, observed, "If the contract was made by the letter of allotment, coupled with the payment of the deposit, then it was not an agreement within the Stamp Act. An offer in

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(1) (1892) 2 Q.B., 484 at p. 490. (2) (1849) 4 Ex. Rep., 403 at p. 407.

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writing accepted by parol does not require a stamp." Then we have another decision of the Exchequer Chamber in *Clay v. Crofts*(1). That was the case of an action by a school-master who published a prospectus, one of the terms being that pupils should not be removed without three months' notice, subject to the payment of one term's fee if they were taken away without notice; a pupil was taken away without notice and the school-master sued for the fee. There it was held that the prospectus was a proposal, and not an agreement, and that no stamp was necessary. PAKKE, B., in the course of the argument, said: "A memorandum does not require a stamp where, being a mere proposal in the first instance, it afterwards becomes binding by subsequent matter." Later on, he says, "This was only a proposal at the time the prospectus was produced to the defendant. It becomes an engagement only when it is qualified by an offer to reduce the terms. The defendant then makes a contract by his conduct. The defendant, by adopting the proposal, and sending his sons to school, makes it a contract. There was only a proposal in the first instance and the case is not within the Stamp Act." The Government Pleader has invited us to say that the passage in the judgment of HAWKINS, J., to which I have referred does not represent the law. Speaking for myself, I am not prepared to say this. The conclusion at which I have arrived is that the document in question in the present case does not require to be stamped as an agreement or as a memorandum of an agreement.

SANKARAN NAIR, J.
TYABJI, J.

SANKARAN NAIR, J.—I agree.

TYABJI, J.—A declaration in the form appended to the letter of reference, dated the 21st September 1911, cannot, it is admitted, of itself constitute any agreement. In order that an agreement may arise between the parties, such a declaration must be followed by some action on the part of the Bank, indicating an acceptance by it of the terms contained in the declaration. It was argued before us that, when subsequently to the declaration, a loan is made by the Bank, then there is a complete agreement, the terms of which are represented by the declaration, and that the declaration then becomes an "agreement or memorandum of an agreement" within the terms of article

5 of the Stamp Act; and must therefore be stamped as such. According to this contention, therefore, the agreement or memorandum of agreement consists, partly of the declaration and partly of its parol acceptance: the declaration is not, in itself, the whole contract: the declaration when read together with its acceptance by the Bank (such acceptance being implied by the Bank making the loan) forms the contract. The decisions cited by the learned Chief Justice, viz., *Clay v. Crofts*(1), *Chaplin v. Clarke*(2), *Hadsplet v. Yarnold*(3) and *Carlill v. Carbolic Smoke Ball Company*(4) show that the Courts in England have held that, under such circumstances, no stamp is necessary in England. The English Stamp Acts, under which the decisions were given, are 55 Geo. III, c. 184 and 54 and 55 Vict., c. 39. The terms of those Acts are not materially different from the terms of the Indian Stamp Act, 1899. I, therefore, agree that the reference should be answered in the negative, as indicated by the learned Chief Justice. The document in question need not be stamped.

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(1) (1851) 20 L.J., Ex., 361.

(2) (1849) 4 Ex. Ch., 403 at p. 407.

(3) (1850) 9 C.B., 624 at p. 625.

(4) (1892) 2 Q.B., 484 at p. 490.
