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October 29.

CIVIL REFERENCE.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight and, Mr. Justice Mahmood.

RADHA BAI (DEFENDANT) *v.* NATHU RAM (PLAINTIFF).*

Stamp--Promissory note not chargeable with duty of 6, 10 *or* 12 *annas—Such promissory note written on impressed sheet of proper value bearing the word "hundi"—Note duly stamped—Act I of* 1879 *(Stamp Act), ss.* 3 (10), 9, 33, 34, 57—*Rules by Governor-General in Council--Notification No.* 1288 *of* 3*rd March* 1882, *Rules* 3, 4, 6—*Notification No.* 2955 *of* 1*st December* 1882, *Rule* 6*A.*

The effect of Notification No. 2955 of the 1st December 1882, amending the Rules made by the Governor-General in Council under s. 9 of the Stamp Act (I of 1879) and published in Notification No. 1288 of the 3rd March 1882, is not to prohibit all promissory notes except those chargeable with a duty of 6, 10 or 12 annas being written on impressed sheets bearing the word "*hundi.*" A Rule which says that certain promissory notes shall be written on impressed sheets bearing the word "*hundi,*" cannot be interpreted as enacting that other promissory notes shall not be written on impressed paper of the proper value if it happens to bear the word "*hundi.*"

A promissory note for an amount not exceeding Rs. 200, payable otherwise than on demand, but not more than one year after date, and requiring a stamp of two annas, is duly stamped if written on an impressed sheet of the value of two annas, though that impressed sheet bears the word "*hundi.*"

THIS was a reference to the High Court under s. 617 of the Civil Procedure Code by the Judge of the Court of Small Causes at Allahabad. The order of reference was as follows :—

"This suit is based on an instrument which, according to the terms of it, is a promissory note, containing as it does an unconditional undertaking to pay a certain sum of money to the plaintiff. It is written on an impressed sheet of the value of two annas, bearing the word '*hundi.*'

"The only plea raised on behalf of the defendant is that the instrument is inadmissible in evidence, not being duly stamped according to the rules laid down by the Government of India.

* Civil Reference (Mis. No. 67 of 1890), under s. 617 of the Code of Civil Procedure by Babu Promoda Charan Banerji, Judge of the Court of Small Causes at Allahabad.

"By s. 34 of Act I of 1879, 'no instrument chargeable with duty shall be admitted in evidence,' unless such instrument is duly stamped.'

"Under clause (10) of s. 3, 'duly stamped' means 'stamped or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed.'

"S. 9 provides that 'all duties with which any instruments are chargeable shall be paid, and such payments shall be indicated on such instruments, by means of stamps *(a)* according to the provisions herein contained, or *(b)* when no such provision is applicable thereto, as the Governor-General in Council may by rule direct.' Rules so framed have by s. 57 the force of law.

"If therefore the instrument on which the claim in this case is founded has not been stamped according to those rules, it is not admissible in evidence.

"I may observe that the instrument in question is not one which might under s. 10 be stamped with an adhesive stamp of one anna.

"The question for consideration is whether the said instrument has been stamped in accordance with the rules made by the Governor-General in Council.

"Those rules were laid down in Notification No. 1288, dated 3rd March 1882, published in page 131 of the *Gazette of India* of that year. Rule 3 prescribes two kinds of stamps for indicating stamp duty, *viz.*, impressed stamps and adhesive stamps. The former includes impressed sheets, or sheets of paper bearing the impression of stamps of different values engraved thereon, and impressed labels.

"By Rule 4 all instruments chargeable with duty except *hundis* may be written on impressed sheets, and, except as provided by s. 10 of the said Act and by these rules shall be so written.'

"Rule 6 provides that *hundis* shall be written on impressed sheets bearing the word '*hundi*.'

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"The rules therefore lay down a distinction between impressed sheets bearing the word '*hundi*' and all other impressed sheets, and they seem to prescribe that *hundis* only should be written on sheets of the former description, and all other instruments on those of the latter description.

"This is further apparent from Rule 6A prescribed by Notification No. 2955, dated 1st December 1882 (*Gazette of India*, p. 487), which runs thus :—

'Promissory notes drawn or made in British India and chargeable with a duty of annas 6, 10 or 12 shall be written on impressed sheets of those values bearing the word '*hundi*.'

"This rule by implication directs that all promissory notes other than those mentioned in it should be written on impressed sheets not bearing the word '*hundi*', so that if a promissory note which is not chargeable with a duty of annas 6, 10 or 12 be written on an impressed sheet bearing the word '*hundi*', it cannot be held to be properly stamped in accordance with the rules framed by the Governor-General in Council. As the promissory note on which the claim in this case is based was chargeable with a duty of two annas only, it should not, according to those rules, have been written on an impressed sheet bearing the word '*hundi*,' and was not therefore duly stamped within the meaning of cl. (10), s. 3. In this view the contention of the learned counsel for the defendant seems to be correct.

"The learned pleader for the plaintiff has, however, drawn my attention to the fact that the invariable practice in this district, including that of the banks here, has been for promissory notes to be written on impressed sheets bearing the word '*hundi*,' and he argues that if the defendant's contention be allowed and the promissory note in suit and similar other promissory notes be held to be improperly stamped, the result will be that many dishonest debtors will be able to evade payment of just debts by taking advantage of their own neglect to execute properly stamped instruments. This circumstance cannot in my opinion be taken into consideration in the decision of the question now before me, but it certainly makes it

desirable that there should be an authoritative ruling on the point. The learned pleader has also filed copies of two unreported decisions of the Hon'ble High Court in which it was held that promissory notes payable on demand were properly stamped if written on impressed sheets bearing the word '*hundi*.' One of these cases was Small Cause Court reference No. 106 of 1885, dated 15th June 1885, upon a reference made by myself from Agra. The other case was 1st appeal No. 50 of 1885, decided on 16th November 1885. Those cases were not on all fours with the present suit, but the principle involved seems to have been the same, and the result of those rulings was that promissory notes written on '*hundi*' paper were properly stamped. The arguments for a contrary view were apparently not submitted to the Hon'ble Judges for their consideration.

"Having regard to the fact that these two rulings exist, and also to the fact noticed above that the practice hitherto has been for such instruments to be written on sheets bearing the word '*hundi*,' I deem it desirable to refer the case to the Hon'ble High Court for an authoritative decision on the following question :—

"Is a promissory note not chargeable with a duty of annas 6, 10 or 12, written on an impressed sheet bearing the word '*hundi*,' duly stamped within the meaning of the Stamp Act (I of 1879) and admissible in evidence?"

Mr. *A. H. S. Reid*, for the defendant, appeared in support of the objection that had been taken to the promissory note.

Pandit *Sundar Lal*, for the plaintiff.

EDGE, C.J.—This is a reference under s. 617 of the Code of Civil Procedure from the Officiating Small Cause Court Judge of Allahabad in which he asks :—"Is a promissory note not chargeable with a duty of annas 6, 10 or 12, written on an impressed sheet bearing the word '*hundi*,' 'duly stamped' within the meaning of the Stamp Act (I of 1879) and admissible in evidence?"

The question is larger than that which we need consider in this particular case. I propose to confine my answer to the question as

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applicable to the particular promissory note as to the admissibility of which the doubt arose. It was a promissory note payable otherwise than on demand, but not more than one year after the date. It was for an amount which did not exceed Rs. 200, and reading s. 5 of the Act in conjunction with clause 11 of the first schedule, it was a note which required a stamp of two annas only. The note in question was written upon stamped impressed paper of the value of two annas, but that paper bore the word "*hundi*," and the contention on behalf of the defendant in the suit is that inasmuch as the impressed paper bore upon it the word "*hundi*," it was impressed paper upon which a promissory note of this description could not lawfully be written so as to comply with the requirements of the Stamp Act and the rules framed by the Governor-General in Council under s. 9 of the Stamp Act, which rules have the force of law under s. 57 of that Act.

It is quite clear that a promissory note, in order to be duly stamped, must be written on impressed paper of an amount equivalent to the stamp required. It is also clear that *hundis* payable otherwise than on demand, but not more than one year after date or sight, and for amounts not exceeding Rs. 30,000 in individual value, must be written on impressed sheets bearing the word "*hundi*."

It has been contended that the effect of Notification No. 2955 of the 1st December 1882, amending the rules published under Notification No. 1283 of the 3rd March 1882, is to prohibit all promissory notes except those chargeable with a duty of annas 6, 10 or 12, being written on impressed paper bearing the word "*hundi*." I cannot so read the rules. The rule of the 1st December 1882, so far as it is material, is as follows :—

"(a). After Rule 6, the following Rule shall be inserted :—

"6(A). Promissory notes drawn or made in British India and chargeable with a duty of annas 6, 10 or 12, shall be written on impressed sheets of those values bearing the word '*hundi*.'

That may, or may not, have been an absolutely unnecessary rule. Whether it was so or not it is not necessary to enquire; but

a rule which says that certain promissory notes shall be written on paper bearing the word "*hundi*" cannot be interpreted as enacting that other promissory notes shall not be written on impressed paper of the proper value, if that paper happens to bear the word "*hundi*."

Under s. 9 of the Stamp Act the Governor-General in Council had power to regulate amongst other things (1) in the case of each kind of instrument the description of stamps which may be used, and (3) in the case of *hundis* the size of the paper on which they are written. Now, in this case the stamp impressed on the paper is of the full amount required for this particular promissory note, and the fact that that paper would be the paper required for a *hundi* requiring a two-anna stamp cannot alter the fact that the paper is of the full amount of stamp duty for the promissory note in question, or cause that promissory note to be considered as having been written on paper which was not duly stamped for that purpose. If the Governor-General in Council had enacted by rule that *hundis* should be written on blue paper, such an enactment alone could not be construed as prohibiting the writing of promissory notes on blue paper. Such a prohibition as is contended for in this case must be specifically enacted, if any such prohibition is intended. In my opinion the promissory note in question was written on duly stamped impressed paper of the requisite amount, and the promissory note, so far as it depends on the stamp, is admissible.

STRAIGHT, J.—By s. 5 of the Stamp Act it is declared that certain instruments shall be chargeable with duty the amount of which is to be found indicated in the first schedule to the Act. In that first schedule art. 11, a document of the kind to which this case has reference requires a two-anna stamp. By s. 9 of the Stamp Act it is declared that all duties with which instruments are chargeable shall be paid, and such payment shall be indicated, by means of stamps. This provision is to be given effect to, either in accordance with other provisions contained in the Act itself, or, where there is no such provision, in accordance with rules which may be made by the Governor-General in Council. These rules are to deal

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with, firstly, in the case of every instrument, the description of stamp to be used; secondly, where impressed stamps are to be used, the number of stamps to be used; and, thirdly, in the case of *hundis* the size of the paper on which instruments of that sort are to be written. No doubt that section earmarks these particulars as amongst "other matters," which such rules may regulate; but, in my opinion, these rules must be limited within and confined to the purposes of that particular section, namely, the duties with which the instruments are chargeable and the indication of payment on such instruments. By s. 57 of the Stamp Act, rules, if made by the Governor-General in Council, have the force of law, and it is common ground between the parties in this case that the question of this reference must be answered upon the rules of March 1882, as amended by the Notification of the 1st December 1882. By the rules of the 3rd March 1882, it is declared, in accordance with the powers conferred by s. 9 of the Stamp Act, that there shall be two kinds of stamps for indicating the payment of duty on instruments under the Indian Stamp Act of 1879; *viz*, *(a)* impressed stamps, which are divided into two classes, impressed sheets and impressed labels, and *(b)* adhesive stamps. It is admitted by the learned pleader for the plaintiff that the promissory note, upon which his client brought his suit, was required by s. 4 of the Governor-General's rules to be written on an impressed sheet, *i.e.*, upon a sheet of paper bearing the impression of a stamp of a particular value, and that it was so written is not denied on the part of the defendant. It is contended for the defendant, however, that because upon the particular piece of paper on which this promissory note is written the word '*hundi*' appears, therefore the paper is not an impressed sheet of the kind contemplated by Rule 4. Both the learned counsel for the defendant and the learned Small Cause Court Judge apparently based their arguments on the Notification of the 1st December 1882, *i.e.*, the argument is this, that because the Notification of the 1st December 1882, says:—"Promissory notes drawn or made in British India and chargeable with a duty of annas 6, 10 or 12, shall be written on impressed sheets of those values bearing the

word '*hundi*,' therefore no other promissory note requiring a less stamp can be written on such impressed paper, and if it is written on such impressed paper it is neither more nor less than an unstamped document. Now it is, I believe, a golden rule of all Judges who have to administer the laws relating to stamps and cognate matters that the provisions of such laws are to be construed strictly, and whenever there is any ambiguity or doubt, in favour of the subject. Consequently, following such rule and believing it to be a sound and a just rule, I shall not hold that this document is an unstamped document unless I find anything in the Governor-General's rules which places it beyond all doubt that this is so. In my opinion there is nothing in those rules which says this, and I hold that the paper upon which this promissory note is written is none the less an impressed paper bearing the impression of a two-anna stamp, because it happens to have the word '*hundi*' written on it, and I therefore entirely agree with the answer to the reference proposed by the learned Chief Justice.

MAHMOOD, J.—I also agree, and agree so entirely with what has fallen from the learned Chief Justice, and also with what has been stated by my brother Straight, that I have no desire to deliver a separate judgment other than showing the reason why I concur with them. The first point which I notice is one of the curious things which do occur occasionally in legislation, namely, the passage of a bill through the Legislature without a preamble. This is one of those exceptional enactments, and I can imagine that it was convenient not to have a preamble to such an enactment, just in the same way as a preamble was apparently thought unnecessary in passing the Court Fees Act (VII of 1870). The Legislature might not have been anxious to explain the reasons of these two enactments, but that reason can be nothing other than that they were taxing the Indian population, a statement which might not quite have suited the comfort of the Indian population had the enactment begun by saying something to this effect:—"Whereas it is expedient to impose further taxes upon the people of India, &c."

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I suspect this would be somewhat the imaginary preamble which would precede both these enactments, but the adage is right,—'sometimes silence is golden.'

Still the enacting part has to be attended to, and in doing so we look not only at the preliminary part, which is merely instructive, but also at the imperative mandate of the Legislature, and it says (s. 5) :—"Subject to the exemptions contained in the second schedule, the following instruments shall be chargeable with duty of the amount indicated in the first schedule as the proper duty therefor respectively," and then follows the specification of documents which includes this promissory note of the 4th January 1887, for the sum of Rs. 200, payable after not more than one year, and bearing interest at 12 per cent. per annum. It is clear that, notwithstanding the absence of a preamble to the statute it is nothing other than a penal statute as understood in the law for the purposes of interpretation. It is also penal by dint of s. 34, *viz.*, that "no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person, or by any public officer unless such instrument is duly stamped :" and then follows a proviso in three clauses to which I do not wish to refer. These two sections, namely, ss. 5 and 34, leave to me no chance of doubting that this statute should be interpreted in the fashion described by my brother, Straight, and indeed in cases of doubt it is impossible to do otherwise than interpret Acts in favour of the subject, that is, not in favour of the State.

There are three other sections of the enactment to which I wish to refer. The first is s. 55, which enables the Governor-General in Council to make rules consistent with the statute "for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons." The next section is s. 56, which gives to the Governor-General in Council power to "make rules consistent herewith to carry out generally the purposes of this Act,"

and then comes s. 57 of the enactment which gives to the rules so made the authority of an Act so soon as they are published in the *Gazette of India*.

In this case all these ceremonies or formalities required by these three sections have been gone through, and in the present case the argument of Mr. *Reid* rests mainly on the notification of the *Gazette of India* in relation to these matters. The learned Chief Justice and my learned brother, Straight, have already dealt with these rules so well and so completely in accordance with my own judgment that, beyond saying this, I wish to say nothing about them.

But because I have always entertained for Sir Michael Westropp, the learned Chief Justice of Bombay, as high a respect as a lawyer and as a Judge as I entertain for the present Chief Justice of this Court, I wish to read one passage from a judgment of Sir Michael Westropp in the case of *Dowlatram Harji* v. *Vitho Radhoji* (1). Sir Michael Westropp said :—

"The imposition of such excessive and minute details would be pitfalls to the unwary and would, by frequently invalidating documents, press harshly upon the illiterate classes, and overthrow thousands of honest transactions without producing any such advantageous result, in the form of revenue to the State, as would compensate it for the discontent which would be occasioned. The Legislature has avoided such stringent details, and it seems to us to have satisfied itself by legislating against defacement of the impressed stamp, and against such a mode of penning the document as would admit of that stamp being used for or applied to any other instrument."

I have read this passage especially because it might be regarded by some as *obiter dictum*, and certainly, from one point of view, I do not deny that it may be so regarded. No doubt Chief Justice Westropp in giving expression to these views felt it his duty to make it clear in his judgment that Judges when they are called upon to interpret, perhaps laxly-worded, statutes, must always remember the general rules of interpretation, which by dint of their

(1) I. L. R., 5 Bom., 168.

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being trained lawyers they are able to keep present to their minds, in spite of the lax use of phrases and conjunctions whether disjunctive or conjunctive, and of the disregard of the proper use of pronouns.

In the present case, if it had not been my good fortune to agree so entirely with what has fallen from the learned Chief Justice and my brother, Straight, I should, in view of the rules framed by the Government of India, have had to think not once, but twice, as to whether or nor they were "consistent" with the enactment within the meaning of ss. 55 and 56 of the Stamp Act (I of 1879).

I am saved from that necessity by the manner in which the case has been dealt with by the learned Chief Justice and my brother Straight, and I have only to say that I agree with their order.

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APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Brodhurst.

SHIB SINGH (DEFENDANT) *v.* SITA RAM (PLAINTIFF).*

Execution of decree—Attachment of debt—Order prohibiting creditor from recovering debt—Suit for rent under attachment—Civil Procedure Code, s. 268 *(a)—Act XV of* 1877 *(Limitation Act), s.* 15*—Injunction or order staying a suit.*

S. 268, clause (*a*) of the Civil Procedure Code, does not mean that, while a debt is under attachment, the person to whom the debt was originally owing, should be barred from bringing a suit in respect of it. What it prohibits is the recovery of the debt, and the payment of it by the debtor to the creditor.

Semble.—An order of attachment under s. 268 of the Civil Procedure Code is not an injunction or order staying a suit within the meaning of s. 15 of the Limitation Act (XV of 1877).

THE plaintiff in this case, Sita Ram, was zamindár and lambárdár of a village Leha Alampur, and the defendant Shib Singh was his tenant. The suit was for recovery of Rs. 2,027-11-4, arrears of rent, under s. 93 (*a*) of the North-Western Provinces Rent Act (XII of 1881), and was instituted in the Court of the Assistant

* Second Appeal No. 892 of 1888 from a decree of H. F. Evans, Esq., District Judge of Aligarh, dated the 6th March 1888, confirming a decree of Maulvi Muhammad Karim, Assistant Collector of Aligarh, dated the 30th March 1887.