1903

EMPEROR v. MUHAMMAD HADI.

but committed Muhammad Hadi to take his trial before the Court of Session.

Upon this Muhammad Hadi applied in revision to the High Court, the main ground in his application being: "Becaue the procedure of the learned Deputy Magistrate is contrary to law and the rulings of this Hon'ble Court,"—which at the hearing was explained to mean the procedure of the Magistrate in committing the applicant without summoning and examining the witnesses named in the applicant's list.

Messrs. *C. C. Dillon* and *Abdul Raoof*, for the applicant.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

STANLEY, C.J.—The learned Magistrate in this case overlooked the provisions of sub-section (3) of section 208 of the Code of Criminal Procedure. The applicant applied to him to issue process to compel the attendance of a number of witnesses on his behalf for examination in his Court. Without, however, examining any of these witnesses, he passed an order committing the case to the Sessions. He ought to have taken all such evidence as the accused was prepared to produce before him. [see *Queen-Empress* v. *Ahmadi* (1)] The order of commitment is set aside and the learned Magistrate is directed to proceed according to law.

1903
August 13.

REVISIONAL CIVIL.

Before Mr. Justice Aikman.

PARSOTAM NARAIN (PLAINTIFF) *v.* TALEY SINGH (DEFENDANT).*

Act No. I of 1872 *(Indian Evidence Act), sections* 91, 65, 22 *Evidence—Cause of action—Suit on a promissory note—Note inadmissible in evidence—Plaintiff not allowed to set up a case outside the note.*

When money is lent on terms contained in a promissory note given at the time of the loan, the lender suing to recover the money so lent must prove those terms by the promissory note. If for any reason, such as the absence of a proper stamp, the promissory note is not admissible in evidence, the plaintiff is not entitled to set up a case independent of the note. *Sheikh Akbar* v. *Sheikh Khan* (2) and *Radhakant Shaha* v. *Abhoychurn Mitter* (3)

* Civil Revision No. 14 of 1903.

(1) (1898) I. L. R., 20 All., 264. (2) (1881) I. L. R., 7 Calc., 256
(3) (1882) I. L. R., 8 Calc., 721.

followed. *Pramatha Nath Sandal* v. *Dwarka Nath Dey* (1) dissented from. *Hira Lal* v. *Data Din* (2) referred to.

1903

PARSOTAM NARAIN v. TALEV SINGH.

ONE Parsotam Narain brought a suit for the recovery of a sum of money in the Court of Small Causes at Fatehgarh. In his plaint he stated that on the 3rd of June 1901 the defendant had taken from him a loan of Rs. 200, promising repayment in two months, and had executed a note of hand. The note of hand contained no stipulation as to interest. The plaintiff, however, alleged that when the defendant failed to pay the amount of the loan on the due date, he agreed orally to pay interest at the rate of 12 per cent. per annum. The plaintiff accordingly claimed Rs. 232-4-0 principal and interest. The note of hand was filed with the plaint. The Judge of the Court of Small Causes held that the note of hand was a promissory note and that it was inadmissible in evidence as not having been properly stamped. He declined to allow oral evidence to be given in proof of the debt and dismissed the suit. Against this decree the plaintiff applied in revision to the High Court under section 25 of the Provincial Small Cause Courts Act, 1887, and it was urged that the Court below was wrong in law in refusing to admit oral evidence to prove the loan, and reliance was also placed upon the alleged oral agreement on the part of the defendant to pay interest.

Mr. *G. W. Dillon*, for the applicant.

AIKMAN, J.—This is an application under section 25 of Act No. IX of 1887 for the revision of a decree of the Judge of the Court of Small Causes at Fatehgarh dismissing the plaintiff's suit. The plaint, which was filed on the 9th of December, 1902, states that on the 3rd of June, 1901, the defendant took a loan of Rs. 200 from the plaintiff, promising repayment in two months, and executed a note of hand. The note of hand contained no stipulation as to interest. The plaintiff's case was that when the defendant failed to pay the amount of the loan on due date, he agreed orally to pay interest at the rate of 12 per cent. per annum. The plaintiff accordingly claimed Rs. 232-4-0 principal and interest. The note of hand dated the 3rd of June, 1901, was filed with the plaint. The

(1) (1896) I. L. R., 23 Calc., 851. (2) (1881) I. L. R., 4 All., 135.

1903

PARSOTAM NARAIN v. TALEY SINGH,

learned Judge of the Court below held that the note of hand was a promissory note and that it was inadmissible in evidence as not being properly stamped. He declined to allow oral evidence to be given in proof of the debt and dismissed the suit.

No appearance was made on behalf of the defendant either here or in the Court below.

On behalf of the applicant it is urged that the Court below erred in point of law in refusing to admit oral evidence to prove the loan.

Reliance is also placed on the oral agreement to pay interest.

The case for the applicant has been argued at great length and with much ability by his learned counsel. After considering his argument and the cases relied on by him, some of which undoubtedly support the pleas put forward, I am of opinion that the decision of the Court below is right. The law to be applied in such cases is most clearly and ably laid down in a considered judgment by Garth, C.J., in *Sheikh Akbar* v. *Sheikh Khan* (1). I entirely approve of and adopt his exposition of the law. He points out that the question whether evidence can be given *aliunde* to prove the consideration for a note depends upon the circumstances under which the note was given.

"When," says the learned Chief Justice, "a cause of action for money is once complete in itself, whether for goods sold, or for money lent, or for any other claim, and the debtor *then* gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note has not been paid at maturity, may always, as a rule, sue for the original consideration, provided he has not endorsed, or lost or parted with the bill or note under such circumstances as to make the debtor liable on it to some third person."

[I would invite attention to the word "then," which I have italicized, in the above passage. It is most important, as I hope to show afterwards.]

"But when the original cause of action is the bill or note itself, and does not exist independently of it, as for instance,

(1) (1881) I. L. R., 7 Calc., 256.

when, in consideration of *A* depositing money with *B*, *B* contracts by a promissory note to repay it with interest at six months' date: here there is no cause of action for money lent, or otherwise than upon the note itself, because the deposit is made upon the terms contained in the note, and no other. In such a case the note is the only contract between the parties, and if, for want of a proper stamp or some other reason, the note is not admissible in evidence, the creditor must lose his money." Later on, he describes the first class of cases as cases "where the cause of action is complete *before* the bill or note is given," and the second class of cases as cases "where the cause of suit is inseparable from the giving of the bill or note."

The case of *Sheikh Akbar* v. *Sheikh Khan* was considered in *Pramatha Nath Sandal* v. *Dwarka Nath Dey* (1). With all deference to the learned Judges who decided the latter case, it appears to me that they entirely misapprehended Sir Richard Garth's judgment in *Sheikh Akbar* v. *Sheikh Khan*. In describing the second class of cases, Sir Richard Garth referred, but merely as an illustration, to the case of a deposit. The Judges who decided the latter case say that when the Chief Justice spoke of a deposit he did not mean a loan. By this the learned Judges imply that Sir Richard Garth intended to exclude loans entirely from the second class of cases. In support of their view they refer to the earlier passage of the judgment quoted above, and say that what was said there was that "where money is lent and a bill or note given for the loan which is not paid at maturity, the creditor may disregard the note and sue on the original consideration." But the learned Judges drop out the important word "then" which occurs in Sir Richard Garth's judgment. What the learned Chief Justice meant is clear. He did not mean that when money is lent upon a promissory note, it is open to the creditor to disregard the note, and sue for the loan. What he meant was that when a loan has been made, and the debtor *subsequently* gives a note, the creditor may disregard the note. Had the learned Judges who decided the case in I. L. R., 23 Calcutta, considered Sir Richard Garth's judgment carefully,

(1) (1896) I. L. R., 23 Calc., 851

1903

PARSOTAM NARAIN v. TALEY SINGH.

they would have seen that Sir Richard Garth did *not* mean to exclude loans from the second category of cases, for when he comes to apply the principles he had laid down to the case before him, he says: "It was therefore a loan of the Rs. 225 to the defendants upon the terms contained in the promissory note, and as there was no loan independently of the note, the note itself was the best evidence of the transaction, and as it could not be proved for want of a proper stamp, the plaintiff could not recover upon it."

In support of my view as to the meaning of Sir Richard Garth's judgment in *Sheikh Akbar* v. *Sheikh Khan* I cite the following passage from a judgment delivered by him in a similar case, *Radhakant Shaha* v. *Abhoychurn Mitter* (1):—"The second point taken by the appellants was that, even although the instrument itself was not admissible in evidence, the plaintiffs were entitled to recover upon proving the consideration for the bill. Of course, if the consideration for the bill had been an independent cause of action, complete in itself *before the bill was given*, the plaintiffs' argument would have been well founded. But here it is stated in the plaint, and it is evidently the fact, that the Rs. 500, which was the consideration of the bill, was advanced by the plaintiffs to the defendants upon this particular bill, and as the bill itself is the best evidence of the terms upon which the advance was made, the plaintiffs could not establish their case without proving the bill. The law upon this subject was fully explained by this Court in the case of *Sheikh Akbar* v. *Sheikh Khan*."

The case of *Hira Lal* v. *Data Din* (2) was a case in which the plaintiff advanced money to the defendant on a deposit of jewels, and the defendant subsequently gave the plaintiff a promissory note for a balance due on the advance, which note being insufficiently stamped was inadmissible in evidence. This case falls within the first class of cases indicated in Sir Richard Garth's judgment.

When a plaintiff lends money, as in the present case, on terms contained in a promissory note given at the time of the loan, he must prove those terms by the promissory note. It

(1) (1882) I. L. R., 8 Calc., 721 (2) (1881) I. L. R., 4 All., 135.

appears to me that the decisions which have held otherwise ignore the provisions of sections 91, 65, and 22 of the Evidence Act; and I do not think that it can be denied that these decisions condone and encourage evasion of the Stamp Act.

The subsequent oral agreement to pay interest on the loan, which is set up in this case, will not help the plaintiff unless he can prove the terms of the loan, and this I hold he cannot do.

For the above reasons I dismiss the application, but without costs as the defendant is not represented.

REVISIONAL CRIMINAL.

1903
August 13

Before Sir John Stanley, Knight, Chief Justice.

IN THE MATTER OF THE PETITION OF RAM PADARATH.*

Criminal Procedure Code, section 250—Complaint—Compensation for frivolous or vexatious complaint—Order for compensation dependent on existence of a "complaint."

Ram Padarath, a Civil Court chaprasi, made a report that in endeavouring to execute a warrant for the arrest of a certain judgment-debtor, he had met with resistance from the judgment-debtor, who had escaped. This report was laid before the District Judge, who directed that the papers should be laid before the District Magistrate with a view to the institution of a case under section 225(B) of the Indian Penal Code. Such proceedings were accordingly instituted; and the case came before the Joint Magistrate, who acquitted the accused and ordered that Ram Padarath should pay Rs. 50 as compensation to the judgment-debtor.

Held that, there being no complaint in the case within the meaning of section 4 of the Code of Criminal Procedure, the order awarding compensation was illegal. *Bharat Chunder Nath* v. *Jabed Ali Biswas* (1) followed.

IN this case one Ram Padarath, a Civil Court chaprasi, was entrusted with the execution of a warrant for the arrest of one Parsotam Gir in execution of a decree of the Court of Small Causes at Allahabad. He reported that he had arrested Parsotam Gir under the warrant, but that the latter had used force and managed to escape from his custody. This report was laid

* Criminal Reference No. 421 of 1903.

(1) (1892) I. L. R., 20 Calc., 481.