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December 11.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Knox.*  
BANARSI PRASAD (PLAINTIFF) v. FAZAL AHMAD (DEFENDANT).<sup>\*</sup>  
Act No. II of 1899 (Indian Stamp Act), section 12—Stamp—Promissory note—Stamp not cancelled—Evidence of consideration for debt aliunde admissible.

Plaintiff sued for the recovery of a loan secured by a promissory note. When the promissory note was produced in Court it was found that the stamp on it had not been cancelled, and it was therefore treated as an unstamped document, and the Court refused to allow other evidence to be given of the debt. *Held* that evidence of the debt was admissible *aliunde*.

When a cause of action for money is once complete in itself, whether for goods sold or 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 is not paid at maturity, may always as a rule sue for the original consideration, provided that he has not endorsed or lost or parted with the bill or note under such circumstances as to make the debtor liable upon it to some third person. *Sheikh Akbar v. Sheikh Khan* (1) followed.

Hon'ble Pandit *Sundar Lal* and Pandit *Moti Lal Nehru*, for the appellants.

Maulvi *Ghulam Mujtaba* (for whom Mr. *Rahmat-ullah*), for the respondent.

THE plaintiff in this case sued to recover a sum of money alleged to have been lent by him to the defendant and to have been secured by a promissory note dated the 12th of August, 1900. Both the debt and the execution of the note were denied by the defendant. When the note was produced in Court, it was found that though it bore a proper stamp the stamp had not been cancelled. The Court (Munsif of Bareilly), therefore treated the note as an unstamped document, and refusing to allow other evidence of the debt to be given dismissed the suit. On appeal this decree was upheld by the Subordinate Judge. The plaintiff thereupon appealed to the High Court.

STANLEY, C.J. and KNOX, J.—The suit out of which this second appeal has arisen was brought by the plaintiff to recover a sum of money alleged to have been lent by him to the defendant and to have been secured by a promissory note dated the 12th of August, 1900. The defendant in his written statement

<sup>\*</sup> Second Appeal No. 263 of 1904, from a decree of Babu Prag Das, Subordinate Judge of Bareilly, dated the 5th January, 1904, confirming a decree of Babu Banke Bihari Lal, Munsif of Bareilly, dated the 3rd of August, 1903.

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denied that he either executed the note or received any consideration therefor, but he admitted that he had money dealings with the plaintiff and that after adjusting the accounts there was a balance due by him to the plaintiff, but this balance he alleged was remitted. At the trial when the note was produced it was found that, though it bore the proper stamp, the stamp was not cancelled as required by section 12 of the Stamp Act, and, therefore, must be treated as an unstamped document, and as such was inadmissible in evidence. The Court thereupon dismissed the suit and impounded the promissory note. On appeal the learned Subordinate Judge confirmed the decision of the Court below, holding that "as the plaintiff did not allege original consideration in the Court below and as he made no attempt there and then to prove such a case" he would not be justified in allowing the plaintiff to put forward such a case at the hearing and to produce evidence in support of it. The assumption of the learned Judge is not strictly accurate. The plaintiff did in his plaint allege consideration for the note, namely, the borrowing of money from him by the defendant. The allegation in the plaint is in the words of the Subordinate Judge, as follows:—"The defendant took a loan of Rs. 572 and executed a promissory note." It seems to us, therefore, that the Court of first instance ought not to have summarily dismissed the plaint, but ought to have given the plaintiff an opportunity of proving the consideration for the note if there was such consideration. The law on the subject is clearly stated by Garth, C.J., in the case of *Sheikh Akbar v. Sheikh Khan* (1). He points out, in regard to the question whether evidence can be given *abundante* to prove consideration for a note, that this depends upon the circumstances under, which the note was given. "When," he observed, "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 is not paid at maturity, may always as a rule sue for the original consideration, provided that he has not endorsed or lost or parted with the bill or note under such

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circumstances as to make the debtor liable upon it to some third person." Now here the plaintiff did state the consideration for the note, namely, money borrowed from him by the defendant. He states that security was given to him for the loan by the making of the note in question, and, therefore, it seems to us that it was open to him to give evidence *abundante* to prove the consideration, even though the note was not admissible in evidence. We, therefore, must allow the appeal, and, as the suit has not been properly tried, we set aside the decrees of both the lower Courts and remand it under section 562 of the Code of Civil Procedure to the Court of first instance through the lower appellate Court with directions that it be reinstated in the file of pending suits and be disposed of on the merits. The costs here and hitherto will abide the event.

*Appeal decreed and cause remanded.*

*Before Mr. Justice Banerji.*

BHAGWAN DAS (JUDGMENT-DEBTOR) APPELLANT v. SUKHDEI  
(DECREE-HOLDER) RESPONDENT.\*

*Execution of decree—Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 179—Decree granting an injunction—Civil Procedure Code, section 260.*

Article 179 of the second schedule to the Indian Limitation Act, 1877, does not apply to an application asking the Court to enforce a decree granting an injunction to abstain from some particular act. All that the Court has to see is whether the party bound by the decree has had an opportunity of obeying the decree or injunction, and has wilfully failed to obey it. *Ram Saran v. Chhatar Singh* (1), followed.

In 1899 Sheo Din obtained a decree against the appellant for possession of a house and an injunction restraining him from occupying the house. The respondent, Sukhdei, having stepped into the shoes of Sheo Din on his death, made in 1904 the present application for execution, alleging that the appellant had taken possession of the house and placed tenants in it, and praying, under section 260 of the Code of Civil Procedure, that the appellant should be ordered to comply with the injunction and further

\* Second Appeal No. 511 of 1905, from a decree of Babu Ram Dhan Mukerji, Additional Judge of Allahabad, dated the 17th of May, 1905, confirming a decree of Pandit Raj Nath Sahib, Subordinate Judge of Allahabad, dated 21st of January, 1905.

(1) (1901) I. L. R., 23 All., 465.

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