

1911

HAMID-UL-  
LAH KHAN  
v.  
NAJJO.

suit out of which this appeal has arisen for recovery of her share of the balance of the dower debt remaining due to Musammat Waziran at the time of her death.

Both the lower courts have decreed her claim. Hence this appeal. The principal ground of appeal is based upon the Indian Limitation Act. The contention of the defendants appellants is that Waziran's dower become payable in December, 1895, when Faiz-ullah died, and that the suit should have been brought within three years from that date under article 104 of schedule II to the Limitation Act. We are not prepared to accept this plea. It is found by the courts below that Musammat Waziran was put into possession of her husband's estate by her husband for satisfaction of her dower debt. She and her heirs were therefore entitled to remain in possession until the dower debt was satisfied. Despite the agreement between Faiz-ullah Khan and his wife, the defendants appellants wrongfully took possession of the estate of Faiz-ullah, and thereby committed a breach of the agreement entered into between him and Waziran. Having thus lost the property which was appropriated by Faiz-ullah to the payment of his wife's dower, it appears to us that the plaintiff was entitled to maintain this suit for recovery of her share of the dower remaining due to Musammat Waziran at the time of her death out of the assets of Faiz-ullah Khan in the hands of the defendants. The balance of the dower due to Waziran was a debt payable out of the estate of Faiz-ullah Khan, and the defendants having wrongfully appropriated the estate which was liable to discharge this debt cannot be permitted to hold the estate without discharging the liabilities attaching to it. Wrongful possession was only taken in 1906. This suit was brought in 1907. Consequently it is not barred by any article of limitation. The suit is not in our opinion governed by article 104 of schedule II to the Limitation Act, but is a suit, the right to bring which accrued when the defendants took possession of the estate of Faiz-ullah Khan and refused to pay the amount due to the plaintiff in respect of her share of Waziran's dower. We therefore dismiss the appeal with costs.

*Appeal dismissed.*

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.  
 AMINA BEGAM AND OTHERS (DEPENDANTS) v. H. H. THE NAWAB OF  
 RAMPUR (PLAINTIFF).\*

1911  
 April, 19.

*Evidence—Promissory note—Unstamped promissory note executed in Rampur in favour of the Nawab of Rampur—Suit on such note in British India—Lex loci contractus—Rampur Stamp Law, sections 52, proviso (c), and 53.*

Certain moneys having been advanced by the Nawab of Rampur, a promissory note was accepted as security in favour of "The Nawab of Rampur" and bearing no stamp. The Nawab, being examined on commission stated:—"This debt is due to me personally, and, ordinarily speaking, a debt which is due to me is due to the State, and a debt which is due to the State is due to me; but the said amount I advanced from my own funds." According to the stamp law of Rampur a document executed in favour of the State did not require to be stamped. *Held* that the *lex loci contractus* had to be applied and that the note in question not being drawn in favour of the Nawab in his private capacity did not require to be stamped.

THIS was an appeal arising out of a suit on a promissory note for Rs. 45,000 executed on the 13th of July, 1906, by one Abdul Ghafur then prime minister of the Rampur State in favour of "the Nawab of Rampur." The promissory note was executed in Rampur, and no stamp was put upon it at the time. When the present suit, which was brought against the heirs of the debtor, was instituted at Bareilly, the vakil for the plaintiff stamped it with a one-anna stamp and filed it in court.

The Subordinate Judge decreed the suit, holding that so long as the note bore the stamp required by the law of British India, it was immaterial whether the provisions of the Stamp Law at Rampur had been complied with.

The defendants appealed.

Dr. Satish Chandra Bunerji, for the appellants, produced a copy of the Stamp Act of Rampur, which he said was a public document and could be admitted under section 74 of the Indian Evidence Act, and could be admitted as proof of the actual law of the State under sections 78 and 84 of that Act.

(Mr. B. E. O'Connor, for the respondent, objected to the admission of this book in evidence here).

The point for decision was, whether a promissory note, which was not a valid instrument according to the law of Rampur when it was executed, could be stamped subsequently in British

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\* First Appeal No. 109 of 1909 from a decree of Pandit Girraj Kishore Datt, Subordinate Judge of Bareilly, dated the 21st of December, 1908.

1911

AMINA  
BEGAM  
v.  
H. H.  
THE NAWAB  
OF RAMPUR.

India and support a suit brought for the recovery of money alleged to be due under it. He submitted that the law of the place of contract should be taken into consideration and cited Story, *Conflict of Laws*, Ed. 4, sections 260, 392; Foote, *Private International Jurisprudence*, Ed. 3, 374; Dicey, *Conflict of Laws*, Ed. 1, rule 147, p. 519; *Alves v. Hodgson* (1), *Clegg v. Levy* (2), *Bristow v. Sequeville* (3). The court below had relied on the case of *In the goods of McAdam* (4). That was a case of a power of attorney which was executed in England to operate in India, and was not stamped there, but was admitted in India. A power of attorney stood on a different footing from a promissory note. Unless the note was a good promissory note in Rampur, it could not be validated by subsequent stamping in British India.

Mr. B. E. O'Connor (Babu Jogindro Nath Charudhri and Babu Lalit Mohan Banerji with him), for the respondent:—

Before a suit relating to a foreign note can be dismissed, the court must satisfy itself that the document on which it is based is *void* according to the law of that foreign State and not merely inadmissible in evidence; Chitty, *Contracts*, Ed. 14, 99. The persons sued on the note were residents of British India; they had property situate in British India, and it was a resident of Rampur who was seeking to enforce a contract against them. Under such circumstances the lower court was right in disregarding the law of Rampur.

STANLEY, C. J., and GRIFFIN, J.—This appeal arises out of a suit on a promissory note executed on the 13th of July, 1906, by Nawab Abdul Ghafur, the then prime minister of the Rampur State, in favour of His Highness the Nawab of Rampur. The document was executed at Rampur on an unstamped paper. The present suit was instituted on the 5th of March, 1908, against the heirs of Abdul Ghafur, who are residents of British India. The document in question, before being put in court, was stamped by the pleader who appeared for the plaintiff with a one anna British India stamp. One of the pleas taken by the defendants in the court below was that the document was void by reason of its not being stamped at the time of execution

(1) (1797) 7 T. R., 241.

(2) (1812) 3 Campbell, 166.

(3) (1850) 5 Ex., 275.

(4) (1865) L. L. R., 23 Cal., 187.

and therefore could not be made the basis of a suit. The court below overruled this plea, holding that it was immaterial whether or not the promissory note in suit complied with the provisions of the Stamp Law of the Rampur State, and that it was enough if it be stamped according to the Indian Stamp Act. The learned Subordinate Judge quoted in support of his view the ruling of *In the goods of McAdam* (1). That case related to a power of attorney which was executed in England and which was stamped in British India. The court held that the power of attorney which was stamped according to the provisions of the Indian Stamp Act was valid for the purposes it was intended to meet. The court below has decreed the plaintiff's suit in full against the property left by the deceased Abdul Ghafur. The defendants appeal. We do not think we can dispose of this appeal satisfactorily without a finding on the issues which we shall state later on. We are not disposed to accept the view taken by the learned Subordinate Judge as to the immateriality of the Stamp Law of the Rampur State applying to the promissory note in suit. There is a considerable current of authority to the contrary, and various authorities have been cited to us by the learned advocate on behalf of the appellants, e.g., Story on the Conflict of Laws, 4th edition, page 392; Foote on Private International Jurisprudence, 3rd edition, page 374; Dicey on the Conflict of Laws, 1st edition, rule 147, page 349.

We, therefore, under the provisions of order 41, rule 25, refer the following issues:—

(1) Whether according to the law of the Rampur State binding on the parties to the suit a promissory note requires to be stamped to give it legal effect? (2) If not so stamped, is it absolutely void? (3) If not absolutely void, what is its force and effect according to the law in force in the Rampur State?

Such further evidence as may be necessary for the determination of these issues may be taken. Ten days will be allowed for objections after the return of the findings.

On receipt of the findings, which were in favour of the defendants appellants.

1911

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AMINA  
BEGAM  
v.  
H. H.  
THE NAWAB  
OF RAMPUR.

1911

AMINA  
BEGAM  
v.  
H. H.  
THE NAWAB  
OF RAMPUR.

Babu *Jogindro Nath Chaudhri*, (with him Mr. *B. E. O'Connor* and Babu *Lalit Mohan Banerji*), for the respondent, submitted that the loan was advanced by and the note was executed in favour of the Nawab of Rampur and not Sir Muhammad Hamid Ali Khan Bahadur, G.C.S.I. It was a note executed in favour of the State and did not require any stamp, as provided by proviso (c) to section 52, Rampur Stamp Law. If the money had been advanced from the Treasury, the note would have been in exactly this form. It was on the face of it in favour of the plaintiff as Nawab of Rampur and not in favour of him in any capacity other than that of the ruler of Rampur. He cited *Bristow v. Sequerville* (1) Section 14 of the Rampur Stamp Law authorized the Nawab to remit the duty on any instrument. It must be assumed that he did remit the duty, if any was required, on the instrument the subject-matter of the present suit. Further, section 53 of the Rampur law provided that when a document which required a stamp but was not stamped, was received in evidence, the admission could not be challenged in appeal. The promissory note here was so received and the defendants could not challenge that admission in appeal.

Dr. *Satish Chandra Banerji*, for the appellant, argued that the money having been advanced from the private funds of the plaintiff, as admitted by him, the promissory note required a stamp. The Nawab held a dual capacity, one that of the ruler of the State, and the other that of private person. Section 52, proviso (c), of the Rampur Stamp Law exempted all documents which were executed in favour of the State. Here the note was not executed in favour of the State but in favour of the Nawab in his personal capacity, and the money was not advanced from the public treasury. It was, therefore, not merely inadmissible in evidence, not having been stamped in accordance with Rampur law, but absolutely void. Section 52, Rampur Stamp Law, enacts that the instrument shall not be acted upon. It is not a rule of evidence merely. The promissory note was therefore for all purposes void. The reference to section 14 was an after-thought, it not having been either alleged or proved in the lower court that the duty was remitted under any order of the

(1) (1850) 5 H.L. 275.

Nawab. Section 53 could not help the plaintiff because the note was never received in evidence by any court in Rampur. The definition of "duly stamped" in section 2, clause (10) of the Indian Act showed that section 36 of that Act could have no application.

STANLEY, C. J. and GRIFFIN, J.—The subject-matter of this litigation is a promissory note executed on the 13th of July, 1906, by Nawab Abdul Ghafur, the then prime minister of Rampur State, in favour of His Highness the Nawab of Rampur. The note was executed at Rampur and was on unstamped paper. Nawab Abdul Ghafur having died, the suit out of which this appeal has arisen was instituted on the 5th of March, 1908, against his heirs, who are residents of British India. Before the promissory note was filed in court, it was stamped by the pleader for the plaintiff with a one anna stamp of British India. One of the defences set up by the defendants was that the document was void by reason of its not having been stamped at the date on which it was signed, and therefore could not be made the basis of a suit.

The court below overruled this plea, holding that it was immaterial whether or not the promissory note complied with the provisions of the Stamp Law of the Rampur State, and that it was a valid document being stamped according to the Indian Stamp Act.

We were not disposed to take this view and therefore referred several issues to the court below for determination. They were as follows :—

(1) Whether according to the law of the Rampur State, binding on the parties to the suit, a promissory note must be stamped in order to have legal effect ?

(2) If not so stamped, is it absolutely void, and

(3) If not absolutely void, what was its force in the Rampur State ?

It was contended before the court below that the promissory note in question was not admissible in evidence not having been stamped in accordance with the law of the Rampur State. Section 52 of the Rampur Stamp Act prescribes that any "instrument chargeable with duty but not duly stamped, shall not be

1911

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AMINA  
BEGAM  
v.  
H. H.  
THE NAWAB  
OF RAMPUR.

1911

A MIN  
BEGAM  
v.  
H. H.  
THE NAWAB  
OF RAMPUR.

admitted in evidence for any purpose by any person having by law, or consent of the parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person unless such instrument is duly stamped." There are several provisos to this section and amongst others the following, (c) "When any instrument is completed by or in favour of the State, or if it bears a certificate under section 46, then it will be admitted in evidence," &c. It was contended on behalf of the plaintiff that the promissory note having been executed in favour of His Highness the Nawab of Rampur, it was admissible in evidence according to the aforesaid proviso. The court below held that the note was given to the Nawab in his private capacity for money lent from his private purse and not from the State Treasury and that therefore the proviso above referred to did not apply. It further held that under the law of the Rampur State binding on the parties, a promissory note requires to be stamped to have legal effect, and that the promissory note sued on not having been stamped was for all practical purposes absolutely void.

Objections have been taken to these findings under order XLI, rule 26. It is contended on behalf of the plaintiff that the note was completed in favour of the Rampur State and was admissible in evidence and that the court below was wrong in holding that the plaintiff was not entitled to the benefit of the aforesaid proviso to section 52.

His Highness the Nawab was examined on commission and he deposed to the circumstances under which the note was executed. In answer to the question whether the debt was due to the State or to himself he said:—"This debt is due to me personally, and, ordinarily speaking, a debt which is due to me is due to the State and the debt which is due to the State is due to me. But the said amount I advanced from my own funds." The note is in the following terms:—"I promise to pay to His Highness the Nawab of Rampur on demand the sum of Rs. 45,000, value received," and is signed by Abdul Ghafur and dated the 13th July, 1906. The argument addressed to us, on behalf of the defendants is that the Nawab occupies a dual capacity, namely, that of ruler of the State of Rampur

and that of a private individual independent of the State, and that the money not having been advanced from the funds in the treasury but from money which His Highness had by him at the time the note cannot be regarded as having been completed in favour of the State. We are unable to accede to this contention. The note was drawn in favour of the Nawab of Rampur, and it is not suggested that if the loan had been a loan from the State, the promissory note would have assumed a different form. But it is said that the money was not taken from the treasury but from moneys in the hands of His Highness, and that therefore the note cannot be regarded as having been made in favour of the State. We think that this is too narrow a view of the case. As His Highness in his evidence stated "the debt which is due to me is due to the State, and the debt which is due to the State is due to me." If the note was completed in favour of the State, then the proviso to section 52 is applicable, and the note was in our judgement, admissible in evidence, it being a note in accordance with the law in existence at the place of contract.

The instrument, it is to be observed, is drawn in favour of the Nawab of Rampur, not in favour of Nawab Sir Muhammad Hamid Ali Khan Bahadur, G.C.S.I. It is on the face of it in favour of the plaintiff as Nawab of Rampur and not in favour of him in any capacity other than that of the ruler of Rampur State. For these reasons we think that the claim of the plaintiff was rightly decreed. It was contended on behalf of the plaintiff that, even if the instrument required a stamp, inasmuch as it was received in evidence in the courts below, its admission as material evidence cannot be called in question in appeal on the ground that the instrument was not duly stamped (see section 53 of the Rampur Stamp Act). It was also contended that under section 14 of the Rampur Stamp Act His Highness the Nawab has power to remit the duty on any instrument, and that under the circumstances of this case it must be assumed that His Highness in accepting an unstamped promissory note remitted the duty payable in respect of it. In view of our finding on the main issue it is unnecessary to determine the two last mentioned points.

1911

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AMINA  
BEGAM  
v.  
H. H.  
THE NAWAB  
OF RAMPUR.



1911

AMINA  
BEGAMH. H.  
THE NAWAB  
OF RAMPUR.

We think that there is no force in the fifth ground of appeal. The second, third and fourth grounds of appeal were not pressed.

For the foregoing reasons the plaintiff is in our judgement entitled to hold the decree which he has obtained. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

1911  
April, 22.

*Before the Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice Tudball.*  
EMPEROR v. MAHABIK AND OTHERS.\*

*Jurisdiction—Offence committed in British India—Appeal from conviction—Transfer pending appeal of place where offence was committed to a native state.*

An offence was committed within British India. Certain persons were convicted thereof and appealed against their conviction to the appropriate court in British India. Pending the hearing of their appeal, however, the place when the offence had been committed was constituted part of an independent native State. Held that this subsequent transfer of territory did not deprive the court in which the appeal had been filed of its jurisdiction to hear it.

In this case three persons had been convicted and sentenced under section 325, of the Indian Penal Code, by a Magistrate of the Mirzapur district. They appealed against their convictions and sentences to the Sessions Judge of Mirzapur. Pending the appeal, however, the place where the offences had been committed, which had been at the time British territory, was transferred to the newly-created State of Benares. The Sessions Judge therefore returned the memorandum of appeal to be presented to the proper court of that State. Against this order the appellants applied in revision to the High Court.

Mr. E. A. Howard, for the applicants.

No one appeared for the Crown.

RICHARDS, C. J. and TUDBALL, J. :—The facts of the matter out of which this application in revision has arisen are shortly as follows :—The three applicants were charged under section 325, Indian Penal Code. Applicants Nos. 1 and 3 were sentenced to

\* Criminal Revision No. 148 of 1911, from an order of W. R. G. Moir, Sessions Judge of Mirzapur, dated the 8th of April, 1911.