

1923

BHOJI.  
RAM  
v.  
RISHORI LAL.

liable Instruments Act and not because it failed to invoke section, 92, proviso (3), of the Evidence Act.

There is no question in this case of the money due under the promissory note having been discharged; for there was no evidence that a balance of the account incorporating this liability was ever struck. The only evidence was that the amount was entered in an account from which a balance might at a future date be struck.

BY THE COURT.—The appeal is dismissed with costs.

*Appeal dismissed.*

## REVISIONAL CIVIL.

*Before Mr. Justice Dalal.*

1923  
March, 8.

AJUDHIA PRASAD (PLAINTIFF) v. RIKHNATH  
(DEFENDANT).\*

Act No. X of 1923 (*Indian Paper Currency Act*), section 25—  
*Promissory note—Note framed as payable to lender or order not within the prohibition of the Act.*

*Held*, that a document which consisted of a promissory note and a receipt, and in the latter the promissory note was described as “*indultalab*” meaning “on demand”, and in the note the words were that the money would be paid “on demand to him, that is, to the lender, or to whomever he orders it to be paid”, was not obnoxious to the provisions of section 25 of the Indian Paper Currency Act, 1923. *Chidambaram Chettiar v. Ayyasawmi Thevan* (1) and *Jetha Parkha v. Ramchandra Vithoba* (2), referred to.

THE facts of this case sufficiently appear from the judgement of the Court.

Munshi Bhagwati Shankar, for the applicant.

The opposite party was not represented.

\*Civil Revision No. 12 of 1923.

(1) (1916) I. L. R., 40 Mad., 585. (2) (1892) I. L. R., 16 Bom., 669.

DALAL, J.—It is unfortunate that the opposite party was not represented, but the Court had the advantage of very valuable argument addressed to it by Mr. *Bhagwati Shankar*. He has placed a printed note before the Court and carefully explained how the words therein cannot be said to offend against the provisions of section 25 of the Indian Paper Currency Act (X of 1923), which replaced previous similar Acts which dated back from 1871 down. What section 25 of the Indian Paper Currency Act prohibits is this—

“ No person in British India shall draw, accept, make or issue any bill of exchange, *hundi*, promissory note or engagement for the payment of money payable to bearer on demand . . . . of any such person.”

The document in suit consists of a promissory note and a receipt. In the receipt the promissory note is described as “*indultalab*”, meaning “on demand”. In the note itself the words are that the money would be paid “*mangne par unko ya jisko woh dilwaen unke hukam par*” (on demand to him, that is, to the lender, or to whomever he orders it to be paid). There are no words here to imply that the money was payable to bearer on demand. In the ruling quoted by the lower court, *Chidambaram Chettiar v. Ayyasawmi Thevan* (1), the point of offence is detailed by KRISHNAN, J., at page 588. In the note which was before their Lordships there was an additional word that the note was payable to bearer. The argument there was that the note was payable to a person or to his order as well. And on this argument the learned Judge observed as follows :—

“ It was further argued that the note in suit did not fall within section 26 of Act No. II of 1910” (corresponding section 25 of the present Act of 1923) “as it was a note payable, not only to bearer, but to a person or his order also. This addition can make no difference, as the note is still a note payable to bearer on demand.”

(1) (1926) I. L. R., 40 Mad., 585.

1928

AJUDHIA  
PRASAD  
v.  
RIKENATH.

It is clear that in the Judge's opinion if the words "payable to bearer" had not existed, a note payable to a person or his order would not have offended against the provisions of the Indian Paper Currency Act. The judgement of FARRAN, J., in *Jetha Parkha v. Ramchandra Vithoba* (1) is a valuable contribution to the law on the subject. Here the note was payable to owner on demand. The learned Judge pointed out that the provisions in the Indian Paper Currency Act follow the wording of the English Bank Charter Act, which was subsequently explained by Stat. 17 and 18 Vict., c. 83, section II. The explanation was that promissory notes which shall entitle, or be intended to entitle, the bearer or holder thereof without endorsement to the payment of any sum of money on demand . . . . . shall be deemed to be notes within the meaning of the English Bank Charter Act. The Indian Paper Currency Act has not been so explained, but the same interpretation should be given to its words. The real test, therefore, is whether the promissory note in suit is payable to any person who may be in possession thereof. Will the bearer of this note without any endorsement have a right to be paid the money due on the note? According to the wording of the note he certainly would not. The demand has to be made by the lender himself, or someone to whom he may order payment. Without endorsement to a particular person the note will not be payable to the bearer thereof. I am therefore of opinion that the lower court was wrong in holding the note to be illegal and void.

I set aside the decree of the trial court and remand the suit to it for a trial on the merits. Costs here and heretofore shall abide the result.

*Application allowed.*

(1) (1892) I. L. R., 16 Bom., 659.