

## FULL BENCH.

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March 2

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.*

KANHAYA LAL (PLAINTIFF) v. STOWELL (DEFENDANT).

*Note or memorandum acknowledging Debt—Promissory Note—Insufficiently stamped document, admissibility in evidence of—Act XVIII of 1869 (General Stamp Act), s. 3 (25), sch. ii, No. 5.*

The plaintiff sold and delivered certain goods to the defendant. The defendant gave the plaintiff, in respect of the price of such goods, the following instrument: "Agra, 14th November, 1877. Due to K, cloth-merchant, the sum of Rs. 200 only to be paid next January, 1878." This instrument was stamped with a one anna adhesive stamp. The plaintiff claimed in the present suit from the defendant Rs. 200, and interest on that amount at twelve per cent. per annum, from the 14th November, 1877, to the date of suit. *Held by STUART, C.J., PEARSON, J., OLDFIELD, J., and STRAIGHT, J., treating the suit as one for a debt, that, although such instrument was not admissible in evidence as a promissory note, as it was insufficiently stamped, it was nevertheless admissible as proof of an acknowledgment of such debt.*

*Per SPANKIE, J., treating the suit as based upon a promissory note, that such instrument, being insufficiently stamped, was not admissible in evidence.*

THIS was a reference to the High Court by Major F. W. Chatterton, Judge of the Cantonment Court of Small Causes at Agra. The plaint in the suit out of which this reference arose stated as follows: (i). That the plaintiff had supplied the defendant with goods from the year 1875 to 1877 as per account-books; (ii) that the defendant acknowledged a sum of Rs. 200 to be due for the said goods on the 14th November, 1877, as per memorandum annexed; (iii) that the defendant had not paid the same; and (iv) that the plaintiff prayed judgment for Rs. 200 principal, and Rs. 72 interest, at Rs. 12 per cent., for three years, or Rs. 272 in all. The defence to this suit was that the document referred to in the plaint was a promissory note and was not admissible in evidence, in the first place, because it was not sufficiently stamped, and, secondly, because it was not stamped at the time of execution. That document, which was signed by the defendant, and bore a one anna adhesive stamp, was in these terms: "Agra, 14th November, 1877.—Due to Kanhaya Lal, cloth-merchant, the sum of Rs. 200 only, to be paid next January, 1878." The plaintiff contended that the docu-

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ment was not a promissory note, but was merely an acknowledgment of a debt given to him by the defendant in order to save limitation, and it was, therefore, properly stamped; and he further contended that it was stamped at the time of execution. The Small Cause Court Judge was of opinion that the document was a promissory note, but being doubtful on the question referred it to the High Court for decision.

The reference was laid before Spankie, J., and Straight, J., who differed in opinion as to the answer to be made to the reference, and submitted the matter to the Full Bench. The opinions of those learned Judges were as follows :—

SPANKIE, J.—We are asked whether an instrument running in the following words is or is not a promissory note: “Agra, 14th November, 1877.—Due to Kanhaya Lal, cloth-merchant, the sum of Rs. 200 only, to be paid next January, 1878.” The claim of the plaintiff is that he supplied the defendant with goods from the year 1875 to 1877, details being entered in his account-books; that the defendant, on the 14th November, 1877, acknowledged a balance of Rs. 200, “as per memo. annexed,” *i.e.*, the instrument referred to us. He, plaintiff, not having been paid in January, 1878, sues for the Rs. 200, with interest for three years from the date of the instrument. The defendant pleads that the instrument is inadmissible, being an insufficiently stamped promissory note, and because it was not stamped at the time of execution. The plaintiff avers that the memorandum is nothing more than an acknowledgment of the money due to himself by the defendant. It seems to me that we are concerned with the question so far as this—Is the document the note or memorandum referred to in art. 5, sch. ii of the General Stamp Act of 1869, or is it a promissory note referred to in art. 2, sch. i of that Act? In coming to a conclusion on the question, we must be guided by the wording of the Stamp Act.

The note or memorandum in art. 5, sch. ii of the General Stamp Act is “written in any book or written on a separate paper, whereby any account, debt or demand, or any part of any account, debt or demand therein specified, and amounting to Rs. 20 and upwards, is expressed to have been balanced or is acknowledged to

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be due." A promissory note is defined by cl. (25), s. 3 of the Act as including "every instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight." The instrument referred to us is an acknowledgment of a balance of account due, but it is something more. Had it run thus: "Due to Kanhaya Lal the sum of Rs. 200," and had it been written when the accounts were gone into and balanced, it would have been the note or memorandum referred to in art. 5, sch. ii of the Act. But when the words "to be paid next January, 1878," are added, I think that the instrument becomes something more than the mere note or memorandum, and falls within the definition, for the purposes of the Stamp Act, of a promissory note, because the maker engages absolutely to pay Rs. 200 to Kanhaya Lal within a limited time, *i.e.*, in January, 1878. I may add that there can be no doubt that the instrument is sued on, for the plaintiff claims interest upon Rs. 200 from the date of the note, 14th November, 1877, to the date of suit. If it was a mere note or memorandum under art. 5, sch. ii, he was obliged to sue upon it, as an acknowledgment of the money being due, or the claim would have been barred by limitation. I would say that the instrument should be stamped as a promissory note.

STRAIGHT, J.—I cannot concur in the view of my honourable colleague Mr. Justice Spankie. The question really submitted by the reference is whether the document to which our attention is called was admissible as evidence in the case before the Small Cause Court Judge. The plaintiff by his suit sought to recover the sum of Rs. 200 principal for goods sold and delivered to the defendant between the years 1875 and 1877, with interest, and his plaint is substantially framed as for a debt due, for the debt was not destroyed, only the remedy was barred, but for the paper of 14th November, 1877, which was tendered in evidence as an acknowledgment that would save limitation. It was not offered in proof as a promissory note, or to establish anything more than the collateral fact that on a particular day the defendant had admitted a specific sum to be due and owing from him. Why, because the document contains incidental words, amounting to a promise to pay, while its direct and substantial character is that of an acknowledgment of debt, it is to be excluded from proof, I cannot

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understand. The question between the parties was not whether the defendant had promised to pay the plaintiff his debt, but whether that debt was due and recoverable. The defendant never denied the genuineness of the paper writing of 14th November, 1877, or questioned the accuracy of the amount alleged to be owing from him, in respect of which the acknowledgment was given. I think, therefore, that the Small Cause Court Judge was in error in refusing to receive the document in evidence, and would so inform him. As authority in favour of the view I have expressed I may mention the case of *Matheson v. Ross*, 2 H. L. Cas. 286; *Gould v. Coombs*, 14 L. J., C. P. p. 175; and *Dhondu Jagannath v. Narayan Ramchandra*, 1 Bom. H. C. Rep., 47.

Mr. *Ross*, for the plaintiff.

The defendant did not appear.

The following judgments were delivered by the Full Bench;

PEARSON, J., (STUART, C.J., and OLDFIELD, J., concurring).—We concur in the view taken by Mr. Justice Straight, and would inform the Small Cause Court Judge in reply to his reference that, although the document in question is not admissible in evidence as a promissory note in proof of a promise to pay, by reason of its being insufficiently stamped, it is nevertheless admissible on the stamp which it bears as a memorandum in proof of an acknowledgment of a debt.

SPANKIE, J.—I do not look upon the note as having been used solely as an acknowledgment of debt. I see no reason to change my opinion that the plaintiff sues on the note and claims principal and interest because the money due was not paid in January. When asked whether the note was a promissory note within the definition of the Stamp Act or merely an acknowledgment of a debt, I am compelled by the terms of the definition in the Stamp Act to say that within the meaning of that Act the document is a promissory note. As the instrument is recorded, it not only acknowledges a debt, but it is a promise to pay the same in January, 1878. It is a new contract, and because there was a breach of it, the plaintiff sued. In a case which came before the

Court,—*Makbul Ahmad v. Iftikhar-un-nissa* (1)—in a document which acknowledged a debt of Rs. 975 as being due to the plaintiff there were the words “I promise to pay you this sum in two months.” This instrument was held to be a promissory note, though both the lower Courts had held it to be nothing more than a note or memorandum falling under art. 5, sch. ii, Act XVIII of 1869.

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STRAIGHT, J.—I have nothing to add to the remarks made by me in my former judgment, or to the opinion therein expressed, to which I still adhere.

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*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spinkie, Mr. Justice Oldfield, and Mr. Justice Straight.*

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DEBI RAI (JUDGMENT-DEBTOR) v. GOKAL PRASAD (DECREE-HOLDER).\*

*Execution of decree—Execution of compromise—Estoppel.*

The parties to a decree for the payment of money altered by agreement such decree as regards the mode of payment and the interest payable. For many years such agreement was executed as a decree, without objection being taken by the judgment-debtor. On the 1st March, 1878, the holder of such decree applied for execution of such agreement. The judgment-debtor objected that such agreement could not be executed as a decree, and such application should therefore be disallowed. *Held* (OLDFIELD, J., dissenting) that such agreement could not be executed as a decree, and such application could not be entertained, and that the judgment-debtor was not, by reason that he had submitted to the execution of such agreement as a decree, estopped from objecting to its continued execution as a decree.

THIS was a reference to the Full Bench by Pearson, J., and Oldfield, J. The facts of the case and the point of law referred are sufficiently stated for the purposes of this report in the order of reference, which was as follows:—

OLDFIELD, J.—A decree was obtained by the respondent against the appellant in this case on the 14th December, 1863, for a sum of money bearing interest at Re. 1 per cent. per annum. The decree continued to be executed up to September, 1870. Subsequently, in the course of proceedings taken in execution of the decree, the parties entered into an agreement by a deed, dated

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\* Second Appeal, No. 86 of 1879, from an order of W. Young, Esq., Judge of Moradabad, dated the 9th July, 1879, reversing an order of Maulvi Sami-ulla Khan, Subordinate Judge of Moradabad, dated the 27th July, 1878.