

and defendant-appellant at the same time executed his decree. There were two sales of two villages belonging to the judgment-debtor, and one of these villages, Khanpur, was sold in execution of defendant-appellant's decree and bought by defendant-appellant for Rs. 700, and later on, on the same day, sold in execution of plaintiff's decree, and bought by him for Rs. 50. The defendant-appellant objected to the second sale, and it was set aside on the ground that the plaintiff's decree then in execution had been satisfied by reason of the payments which, as above related, had been at defendant's instance set-off against it, but which had been afterwards written off against the plaintiff's smaller decree, and by the sale-proceeds of the sale to defendant. The plaintiff now brings this suit to have the sale confirmed to him and for possession of Khanpur. He also sued in respect of another village, but the appeal does not refer to that. The lower appellate Court has decreed the claim and defendant-appellant contests the finding.

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It appears to us that plaintiff is able to maintain a suit for the cancelment of the order setting aside the sale and for its confirmation in his favor, for that order was not one made under s. 257, Act VIII of 1859. The sale was set aside at the instance of a purchaser under another decree, because in the opinion of the Court the decree of plaintiff had been satisfied. Now, in examining the proceedings taken in execution of the plaintiff's decree, this finding of the Court executing the decree is erroneous. The previous payments had been set-off against the plaintiff's decree of smaller amount, and any to the contrary effect, at the instance of a stranger, was improper. So far therefore the order setting aside the sale of plaintiff was unwarranted. The lower appellate Court's so far modified by declaring plaintiff's right to have the sale confirmed in his favor and cancelling the order decreeing him

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Jus

GIRDHARI DAS (DEFENDANT) v. JAGAN NATH

Promissory Note—Evidence—Act XVIII of 1869 (Sta

A promissory note, not payable on demand, executed and brought to a Collector, under s. 39 of Act XVIII of

* First Appeal No. 63 of 1878, from a decree of Subordinate Judge of Agra, dated the 1st May, 187

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the proper stamp, who, upon the payments provided in that section having been made, made the endorsement thereon provided in that section. Held that the irregularity of the Collector in making such endorsement did not render such promissory note inadmissible in evidence.

THIS was a suit for Rs. 22,346, principal moneys, and Rs 2,471-4-0, interest thereon, founded on an instrument called an "agreement" (*ikrār-nāma*). The plaint in the suit stated that on the 8th August, 1876, at Bindraban, Muttra district, the plaintiff, "through his guardian, mother, and friend Dhani, lent the defendant Rs. 22,346; that the latter caused to be written and completed by his seal and signature the agreement (*ikrār-nāma*), bearing three months' time, which is the basis of the claim, and delivered it to the plaintiff's mother; that the said amount was payable on the 8th November, 1876; and that the defendant had not paid the said amount." The instrument referred to in the plaint, which was dated the 8th August, 1876, was not stamped at the time of execution. Subsequently to its execution it was brought to the Collector in order that he might, under the provisions of s. 39 of Act XVIII of 1869, assess and charge the stamp-duty to which he considered it to be liable. The stamp-duty, and the penalty incurred through the instrument having been executed on unstamped paper, having been paid, the Collector certified by endorsement on the instrument that the proper stamp-duty had been paid. The certificate was in the following terms:—"To-day, the 5th October, Ram Prasad, mukhtār, deposited through Brij Mohan, of Dhani, Rs. 82-8-0 on account of value of stamped paper; 8-0 on account of (fine) five times the aforesaid amount; on account of court fees, under s. 39 of Act XVIII of 1869, other Rs. 500, in the treasury: this verification has been made under s. 39 of Act XVIII of 1869, and this paper is held to be of sufficient value."

set up as a defence to the suit that "the instrument on which the basis of the claim was not an agreement (*ikrār-nāma*), but a promissory note, and having been executed on unstamped paper, was invalid, and that the proceedings of the court in the suit were not being in accordance with law." The court held that, under s. 39 of Act XVIII of 1869,

the instrument must be deemed duly stamped and receivable in evidence, by reason of the Collector's endorsement. It further held that the instrument was not a promissory note but a bond; and deciding the case on the merits in favor of the plaintiff gave him a decree.

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The defendant appealed to the High Court, contending, *inter alia*, "that, as the note upon which the suit was based originally bore no stamp, and could not be stamped afterwards, under the provisions of the law, it was not receivable in evidence, and the lower Court had erred in holding that it was not a promissory note, and in holding that, having been stamped subsequently to its execution, it could be received in evidence and acted upon."

Mr. Howard, and Pandits *Ajudhia Nath* and *Bishambhar Nath*, for the appellants.

The *Junior Government Pleader* (*Babu Dwarka Nath Banarji*), for the respondent.

The judgment of the High Court (STUART, C. J., and OLDFIELD, J.), so far as it related to the above contention, was as follows:—

JUDGMENT.—The first objection taken in appeal is as to the inadmissibility of the note-of-hand on which the claim is based, in that it is a promissory note requiring a stamp; but, assuming for the present that the instrument is a promissory note, in our opinion, the objection fails with reference to the provisions of s. 39 of the Stamp Act, since it has been certified by endorsement made on the note by the Collector under s. 39 that the full duty with which it is chargeable has been paid. It is no doubt provided in s. 39 that this section does not authorize the Collector to make any such endorsement on promissory notes, yet an irregularity in making such an endorsement, the remedy for which will be by appeal or revision by the chief revenue authority under s. 40, will not prevent the admission of the document as evidence, for s. 39 specially provides that the instrument shall on endorsement be deemed to be duly stamped, and shall be receivable in evidence or otherwise in all Courts and public offices as if originally executed on paper bearing the proper stamp.