REVISIONAL CIVIL.

Before Mr. Justice Muhammad Raza.

NANHKU SINGH (DEFENDANT-APPLICANT) *v.* GIRJA BUX SINGH (PLAINTIFF-OPPOSITE-PARTY.)* 1929 *July*, 25.

Promissory note—Pro-note not duly stamped and not admissible in evidence—Debt contracted and also a pro-note executed—Suit on the loan independently of the pro-note, whether can be maintainable—Evidence Act (I of 1872), section 91, applicability of.

If a plaintiff alleges in his plaint that he lent money to the defendant for which the defendant executed a promissory note, a decree may be passed for the amount which is proved to have been lent even if the execution of the promissory note is not proved or the promissory note is found to be inadmissible in evidence for want of proper stamp. If he has evidence oral or otherwise, independent of the promissory note, that he made a loan of a sum of money to the defendant on the condition that the money would be repaid on demand with interest at a certain rate, he can sue on that obligation ignoring the existence of the promissory note, and in that case it cannot be said that section 91 of the Evidence Act will stand in his way. *Bachchu Lal* v. *Kandhai Lal* (1), *Dwarka* v. *Idu* (2), *Ram Sarup* v. *Jasoda Kunwar and others* (3), and *Miyan Bux* v. *Musammat Bodhiya* (4), relied on, and *Muthu Sastrigal* v. *Visvanatha Pandarasannadhi* (5), referred to.

Mr. *Ishuri Prasad*, for the applicant.

Mr. *Radha Krishna*, for the opposite party.

RAZA, J.:—This is an application in revision under section 25 of the Small Cause Court Act (IX of 1887).

It may be said that the suit was based on a pro-note, but it was not stated in the plaint that the pro-note

*Section 25, Application No. 15 of 1929, against the order of Pandit Shyam Manohar Nath Sharga, Subordinate Judge as Judge Small Cause Court of Unao, dated the 30th of November, 1928.

(1) (1902) 6 O.C., 16. (2) (1923) 26 O.C., 361.
(3) (1911) I.L.R., 34 All., 158. (4) (1928) 26 A.L.J., 729.
(5) (1913) I.L.R., 38 Mad., 660.

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was the only evidence of the loan. It was alleged in the plaint that the defendant had borrowed the money (Rs. 300) in cash from the plaintiff and that the loan was evidenced by a pro-note (*ba tahrir ruqqai indulta-lab*). The plaint was subsequently amended. It was stated in paragraph 1 of the plaint as amended that the defendant had borrowed Rs. 300 from the plaintiff at Rs. 4-11-0 per cent. per mensem payable on demand and that the loan was evidenced by a pro-note and a receipt executed by the defendant on the same date. The plaintiff sued to recover Rs. 400 principal and interest, alleging that the defendant had paid nothing on account of the debt contracted by him.

The claim was resisted by the defendant.

The pro-note was impounded as it was not duly stamped. However the learned Judge of the Small Cause Court gave the plaintiff an opportunity to prove the debt independently of the pro-note. He found on the evidence that the defendant had borrowed Rs. 300 from the plaintiff at three pies per rupee per month. The plaintiff's claim was therefore decreed with costs.

The defendant has filed this application for revision contending that the learned Judge of the Small Cause Court was wrong in allowing the amendment of the plaint and also in giving the plaintiff an opportunity to prove the debt independently of the pro-note.

I have heard the learned Counsel on both sides at some length. In my opinion the learned Judge was perfectly right in allowing the amendment of the plaint and also in giving the plaintiff an opportunity to prove the debt independently of the pro-note. Even if the learned Judge had not allowed amendment of the plaint, the plaintiff was entitled to prove the debt independently of the pro-note in question. The defendant had contracted the debt and had also executed the

pro-note in question in favour of the plaintiff. It was never stated in the plaint that the pro-note was the only evidence of the loan. It was of course stated in the plaint that the loan was evidenced by a pro-note, but this does not mean that the pro-note was the only evidence of the loan. The suit was primarily based on the loan of which the promissory note was alleged to be evidence. It was not based on the execution of the promissory note in question. The cases of *Bachchu Lal* v. *Kandhai Lal* (1) and *Dwarka* v. *Idu* (2) are authorities for the proposition that if a plaintiff alleges in his plaint that he lent money to the defendant for which the defendant executed a promissory note, a decree may be passed for the amount which is proved to have been lent, even if the execution of the promissory note is not proved or the promissory note is found to be inadmissible in evidence for want of proper stamp. It was held in the case of *Ram Sarup* v. *Jasoda Kunwar and others* (3) that if a creditor has a cause of action for the recovery of money, for which his debtor has executed a promissory note, separate from and independent of the note, he can recover upon such cause, in case the note for any reason cannot be put in evidence. Nor is the creditor necessarily debarred from suing on the original cause of action by the fact that it arose out of the same transaction in the course of which the promissory note was executed. It was held by a Full Bench of the Allahabad High Court in the case of *Miyan Bux* v. *Musammat Bodhiya* (4) that a promissory note payable on demand to the lender or the bearer or to order offends against the provision of section 25 of the Paper Currency Act (X of 1923) and therefore cannot form the basis of a suit. The plaintiff can however sue on the basis of any obligation, whether antecedent to or arising simultaneously with the execu-

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(1) (1902) 6 O.C., 16.
(2) (1923) 26 O.C., 361.
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tion of the promissory note, independently of the execution of the promissory note.

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The applicant's learned Counsel has referred to section 91 of the Evidence Act and relied on the ruling of the Madras High Court in the case of *Muthu Sastrigal* v. *Visvanatha Pandarasannadhi* (1). I should like to note, however, that the following observations were made in the Full Bench ruling of the Allahabad High Court mentioned above at pages 740 and 741: "For instance, where the plaintiff can prove that on a balance of account a sum is due to him he can sue on that obligation, ignoring the fact that in regard to it or part of it an unlawful promissory note was executed. Similarly, if he has evidence, whether oral or otherwise, independent of the promissory note, that he made a loan of a sum of money to the defendant on the condition that the money would be repaid on demand with certain interest, he can sue on that obligation ignoring the existence of the promissory note. Nor in this latter case can it be said that section 91 of the Evidence Act will stand in his way. The terms of no 'contract' have in this case been reduced to the term of a contract, for *ex hypothesi*, the agreement embodied in the promissory note was not enforceable by law and was therefore not a 'contract'. Nor without unduly straining language could the transaction be described as 'a disposition of property'.". I take the same view.

In my opinion the learned Judge of the Small Cause Court was perfectly right in decreeing the plaintiff's claim. Hence I reject the defendant's application for revision with costs.

Application dismissed.

(1) (1913) I.L.R., 38 Mad., 660.