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MA PYU
v.
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BAGULEY, J.

before that date the defendant's house was standing on the site in question. This must be regarded as notice of the defendant's interest in the land to the plaintiff; for, the plaintiff's agent P. C. Dey, who is her husband, has a shop quite close to the land now in dispute. It is therefore not necessary to say anything further.

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Carr.

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June 18.

MA NYUN
v.
MAUNG SAN MYA AND ANOTHER.*

Stamp Act (II of 1899), ss. 35 (a), 36—Promissory-note insufficiently stamped, admitted in evidence—Proviso (a) of s. 35—Whether such admission amounts to illegality—Appellate Court's power to question the admission.

Held, that where a trial Court admits an insufficiently stamped promissory-note in evidence on payment of the duty and penalty, overlooking the fact that proviso (a) of s. 35 of the Stamp Act does not apply to a promissory-note, the Court cannot be said to have acted illegally, and having regard to the provisions of s. 36 of the Act the Appellate Court has no power to question the admission of the document, and to reject it on the ground that it was not duly stamped.

Devachand v. *Hirachand*, 13 Bom. 449; *Khoob Lall* v. *Jungle Singh*, 3 Cal. 787; *Mi Ke* v. *Nga Kan Gyi*, II U.B.R. Stamp 36; *Panchanand* v. *Taramoni*, 12 Cal. 64—*followed.*

Maung Ba Kywan v. *Ma Kyi Kyee*, 2 L.B.R. 103—*dissented from.*

Paw Tun for the appellant.

Kin U for the respondents.

CARR, J.—This was a suit on a promissory-note. Both the Courts below have agreed that the plaintiff proved the execution of the note. The Township Court on that finding gave a decree for the plaintiff,

* Special Civil Second Appeal No. 52 of 1928 against the judgment of the District Court of Tharrawaddy in Civil Appeal No. 102 of 1927.

but, on appeal, the District Court reversed that decision on the ground that the promissory-note sued upon was insufficiently stamped. The facts as regards the promissory-note were that it was for Rs. 600 and stamped with one one-anna stamp only. As it should have been stamped with two-annas the Township Judge impounded it and levied the deficient duty of one-anna and a penalty of Rs. 5, purporting to act under section 35 of the Stamp Act. He was wrong in his action, having overlooked the fact that proviso (*a*) to section 35 does not apply to a promissory-note. However, he did levy the duty and penalty and he did admit the promissory-note in evidence. The District Judge was right in his finding that the note could not properly have been admitted in evidence. He held on the authority of *Maung Ba Kywan* v. *Ma Kyi Kyee* (1) that section 36 did not apply in this case and, therefore, on his finding that the note was inadmissible he set aside the decree and dismissed the plaintiff's suit. In the case relied upon by the District Judge Mr. Justice Fox held that section 36 of the Stamp Act was not applicable to a promissory-note. He said that the Township Court by admitting and acting on the document had acted illegally and that that illegality could be corrected by an Appellate Court. He remarked that the cases of *S. A. Ralli* v. *Caramali Fazal* (2) and *Chenbasapa* v. *Lakshman Ramchandra* (3) supported his view. That appears to be the latest reported Lower Burma decision on this point. There is, however, an Upper Burma case, *Mi Ke* v. *Nga Kan Gyi* (4) in which the Judicial Commissioner, now Sir George Shaw, expressly dissented from Mr. Justice Fox's ruling. He said in his judgment that the Bombay cases relied

(1) (1903) 2 L.B.R. 103.
(2) (1890) 14 Bom. 102.
(3) (1894) 18 Bom. 369.
(4) II U.B.R. (1907-09) Stamp 36.

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CARR, J.

upon in the Lower Burma decision did not deal with the point for determination. I have myself referred to those cases and I entirely agree with his view.

The terms of section 36, Stamp Act, are exceedingly wide and in their plain ordinary meaning they undoubtedly refer to any document which has, in fact, been admitted in evidence, and are sufficient to cover the case of a promissory-note or of any other document to which proviso (*a*) to section 35 is not applicable. There are a number of other cases in which the view taken by Sir George Shaw has been taken. These refer to earlier Stamp Acts but there is no material difference between the relevant provisions of those Acts and those of the Act now in force. In *Devachand* v. *Hirachand Kamaraj* (1), the document in question was a promissory-note but the Judge of the trial Court held that it was a bond and admitted it in evidence on payment of duty and penalty. Later, before the suit had been decided, his successor formed the opinion that the document was a promissory-note and that its admission in evidence was illegal. On that ground, therefore, he dismissed the suit. A Full Bench of three Judges of the Bombay High Court held that the promissory-note having once been admitted in evidence could not afterwards be rejected on the ground that it was not duly stamped. In *Khoob Lall* v. *Jungle Singh* (2), the trial Court held that the document before it was not a promissory-note but a letter of agreement and admitted it in evidence on payment of penalty. Before the High Court it was argued that the document was, in fact, a promissory-note and that it being a promissory-note section 39 of Act XVIII of 1869 was not applicable. The Calcutta High Court

(1) (1889) 13 Bom. 449. (2) (1878) 3 Cal. 787.

held that the admissibility of the document could not be questioned in appeal. In *Panchanand Dass Chowdhry* v. *Taramoni Chowdrain* (1), the document in question was held by the trial Court to be a bond and it was admitted on payment of duty and penalty. The first appellate Court held that the document was a promissory-note and was not admissible in evidence and therefore reversed the decision. It was held by the High Court that the Subordinate Judge sitting in appeal had no authority to review the question of the admission of the document. It held that the Stamp Act, I of 1879, governed the cases and that under the third proviso of section 34 of that Act, which was essentially identical with section 36 of the present Act, the admission of the document could not be questioned in appeal. All these cases are directly relevant to the question now before me and they all support what in my view is the plain meaning of section 36. In my opinion, therefore, the decision of Mr. Justice Fox in *Maung Ba Kywan* v. *Ma Kyi Kyee* (2) was wrong. I therefore allow this appeal, set aside the judgment and decree of the District Court and restore those of the Township Court. The respondents will pay appellant's costs in all Courts.

(1) (1886) 12 Cal. 64.

(2) (1903) 2 L.B.R. 103.