

APPELLATE CIVIL.

Before Mr. Justice Braund.

1938
 July 28.

ROSHAN N.M.A. KARIM OMER & CO.

v.

MOHAMED EBRAHIM AND ANOTHER.*

Stamp Act, Burma, Art. 1, Sch. I—Acknowledgment supplying evidence of debt—Running account of loans on one side and prices of goods supplied on other side—Statement of account—Balance struck and signed—Test is whether the purpose of the statement of account is to supply evidence of debt due—Statement one of the series—Stamp not necessary.

Article 1 of the First Schedule of the Burma Stamp Act requires something more than a mere acknowledgment of a debt. It requires an acknowledgment of a debt brought into existence for the purpose of supplying evidence of such debt.

Galstann v. Hutchison, I.L.R. 39 Cal. 789; *Surjimmull v. Ananta Lal*, I.L.R. 46 Mad. 948, referred to.

The plaintiffs and the defendants had for several years a running account between them consisting on the one hand of loans by the plaintiffs to the defendants and on the other hand of the prices of hides supplied by the defendants to the plaintiffs at the current market rate, less one anna. There were consecutive statements of account every month on the plaintiffs' note paper, showing the balance of the account of the previous month and giving on the one side the loans made to the defendants and on the other side the prices of hides supplied during the current month and the debit balance due. The defendants signed these documents without any other writing. They remained with the plaintiffs and were unstamped.

Held, that these documents did not fall within art. 1, schedule I of the Stamp Act. Having regard to the course of business between the parties and upon the particular facts of this case, the transactions were continuous transactions and, at no point of time, was it contemplated by the parties that any of these particular balances, except possibly the last one, would ever become payable in cash by the defendants to the plaintiffs. The balance was struck and signed, not for the purpose of affording evidence that the particular sum of money was then due, but simply as one of a series of periodic statements of account which, for the convenience of the parties, were exchanged at fixed intervals.

K. C. Sanyal for the appellants.

Chari for the respondents.

* Civil 2nd Appeal Nos. 126 and 127 of 1938 from the judgment of the District Court of Mandalay in Civil Appeal No. 53 of 1937.

BRAUND, J.—This is a point which lies within a very small compass but is nevertheless not quite free from difficulty. The suit was originally tried in the Court of the Subdivisional Judge of Mandalay. The plaint discloses that the plaintiffs were merchants dealing in, among other things, hides while the defendants were alleged to carry on a business in partnership as butchers. It is then said—and this much is common ground between the parties—that for some years past there had been an arrangement between them under which moneys were from time to time lent by the plaintiffs to the defendants, while the defendants from time to time supplied the plaintiffs with hides which were no doubt derived from the animals used by the defendants in their capacity as butchers. And between the plaintiffs and the defendants there was, therefore, throughout the period during which this arrangement lasted a state of running account consisting on the one hand of the loans by the plaintiffs to the defendants and upon the other hand of the price of hides supplied by the defendants to the plaintiffs. It is for the balance of that account as on the 31st of March 1934, which is the date on which the arrangement is said to have come to an end, that this suit has been brought.

The balance is said to have been Rs. 504-9-6 to which is added an almost equal sum for interest, making the total claim 988-6-6. I need not, I think, for the present purpose deal with the defence. It is sufficient for me to say that the case was tried by the Subdivisional Judge who came to a conclusion, based, as it seems to me, upon the circumstance that he was unable to admit in evidence a certain document, which is Exhibit A in the case. That document is in the form of an account signed by one of the defendants and by means of it it was sought by the plaintiffs to prove the debt. The Subdivisional Judge in the course of his

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judgment observes that if that set of accounts is admissible then the case is concluded in favour of the plaintiffs. But he went on to hold that the document in question was inadmissible in evidence for any purpose and, accordingly, upon the remaining materials before him he was unable to find the plaintiffs' debt established. That was taken on appeal to the District Court of Mandalay and the learned Judge of that Court took the same view of the document which is Exhibit A.

Upon appeal in this Court the primary point that I have to consider is whether, as a matter of law, the Subdivisional Judge was right in excluding Exhibit A from his consideration. The ground upon which it has been said that Exhibit A is admissible in evidence for no purpose is that it is a document which falls within the mischief of Article 1 of the First Schedule to the Burma Stamp Act. And, for the purpose of determining whether or not it is a document such as is described in that Article, it will be necessary for me to consider carefully both the nature of Exhibit A itself and the circumstances in which it is brought into existence. But before I do that I must refer to the terms of Article 1 of the First Schedule to the Act itself. That Article reads thus :

"1. Acknowledgment of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession."

Then follows the proviso with which I am not concerned.

Thus, there are a number of conditions to be fulfilled before any particular document qualifies as an acknowledgment of a debt so as to be liable to a one

anna stamp duty under this Article. First and foremost, it must be an acknowledgment of a debt exceeding Rs. 20 in amount or value ; secondly, it must be written or signed by or on behalf of a debtor ; thirdly, it must be so written or signed in order to supply evidence of such debt ; fourthly, it must be so written or signed in a book or on a separate piece of paper and fifthly, if it is in a book, that book, or if it is on a paper, that paper must be left in the creditor's possession.

I may say at once that in this case the document in question was constituted by a separate piece of paper and there is no dispute but that such separate piece of paper was left in the plaintiffs' possession. We are, therefore, not concerned with the fourth and fifth of those conditions. I have in dealing with a statutory provision of this kind to deal with the matter strictly. It has been pointed out in more than one place that the penalty for omitting to stamp with a one anna stamp a document that should be so stamped under this Article is important because the Act, whether by design or not I do not know, has omitted to give any opportunity for having it stamped under the usual penalty.

If the document offends against this Article then it is admissible in evidence for no purpose whatever and by no means can it be made so admissible. It has been rightly pointed out that that is a very severe penalty for what after all is not a very serious loss to the revenue. However that may be, and however inclined a Judge might be on that account to take a generous view of the requirements of the Article, nevertheless one must, when faced with this question, decide it strictly and judicially. I shall have again to refer to this Article but I propose now to deal with the document itself and the circumstances in which, so far as I can tell from the evidence, it was brought into existence.

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During the currency of the arrangement between the plaintiffs and the defendants, to which I have already drawn attention, it was the practice at the end of each month for the plaintiffs to submit to the defendants a statement which the defendants, or rather the first defendant in particular, in the circumstances that I have before me signed and then handed back to the plaintiffs.

I have been in some doubt as to whether the defendants obtained or were given each month a copy for themselves; but upon a reference to Exhibit E written by the plaintiffs to the defendants, so far as I can see, it would seem that a copy of the account was either retained by or given to the defendants. The monthly statements, at any rate in three instances, namely, those for January, February and March, 1934, which I have before me, are written upon sheets which are I think the ordinary bill sheets of the plaintiffs. It may be that it is the note paper of the plaintiffs, or it may be that it is their bill form. I do not think it matters much. In either case it contains in print the plaintiffs' name, their description, their address and all the other items of business interest that are usually found in documents of this kind.

The first of these statements, that for January—and I emphasize that the exhibited statements are only three instances of the statements that were delivered regularly each month during the term of the arrangement—is in this form. It opens by bringing forward from the previous month the balance of the account. In this case there was at the beginning of the month of January a debit against the defendants for Rs. 419-1-6. They are then debited with a sum of cash which may have been a cash loan and on the 20th of January they are debited with another cash loan of Rs. 100 and there are two trifling items of three annas each to their debit, the

meaning of which I do not know. On the other side of the account they are given credit in that month for Rs. 37 and Rs. 44 which no doubt represent the value of hides supplied by them during the month. And, as a result of that, the month closes with a debit of Rs. 468-3-0 in favour of the plaintiffs against the defendants. Beneath that is placed the signature of the first defendant. It is accompanied by no writing ; it is simply signed by the first defendant.

The account for February is in the same form and is similarly signed. The concluding balance against the defendants is Rs. 399-13-6.

The March statement again is precisely similar and ends with a balance of Rs. 504-9-6 in the plaintiffs' favour. That is the principal sum which is now sued for and that document, like its predecessors, has been signed by Ebrahim without a comment of any kind.

The point I desire to emphasize again is that those three documents are the three concluding documents of a series which as far as I know—I think it is admitted by the parties—lasted throughout the term of the business relations between the parties.

There is one other matter of fact which I think I ought to mention, which is that the plaintiffs held two promissory notes for Rs. 100 each. One or both of these promissory notes are unstamped and are of course inadmissible in evidence ; but that does not I think prevent me from taking notice of the promissory notes themselves and the fact that the promissory notes were unstamped, I think, is a matter extraneous to the point I have to decide.

So far as the oral evidence in the case goes it is remarkable having regard to the contest involved in this suit that no really explicit evidence is given as to why the monthly statements of which Exhibits A are the samples were brought into existence by the parties.

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Abdul Shakur says in his evidence in chief :

“ Every month we used to make statements of accounts. We used to take the signature of one of the defendants on these statements. The defendants had had dealings with us for the last 13 years. Exhibits AA and B are the extracts from our books of accounts.”

I should perhaps have said, in order to make it quite clear, that the statements, the contents of which I have been explaining, were really only extracts from the plaintiffs' books. We have the relevant pages of the plaintiffs' books themselves in evidence and it is clear that each of the monthly statements was a mere copy of the plaintiffs' own account. Abdul Shakur goes on to say :

“ Exhibits A, A1 and A2 were the statements of accounts made and the signatures thereon are those of Ebrhaim, the first defendant. These exhibits are in my handwriting. Ebrhaim signed them in my presence.”

And in cross-examination he says :

“ The accounts were settled once in a month or once in two months. Then sometimes we took back such receipts from the butchers but we did not do so sometimes.”

And later on in cross-examination he says :

“ When I made out statements of accounts I required the butchers (that of course is the defendants) to bring the receipts which they had obtained from the Durwan.”

That refers to the receipts for hides delivered by the defendants to the plaintiffs during the course of the arrangement. And a little later on he says :

“ The butchers brought receipts issued by the Durwan when I made out statements. The money we gave to the butchers are not loans but advances for supply of hides though promissory notes were taken.”

Abdul Gaffar, the assistant manager of the plaintiffs, says :

“ The procedure adopted in all offices is to advance money to butchers on promissory notes as well as without promissory notes and such advances are entered in the books of accounts. When hides are supplied we pay one anna less than the market price. When the butchers stop supplying hides to us we charge interests on the advances and file suits against them.”

Abdulla, the sixth plaintiffs' witness, said in examination in chief :

“ The accounts were settled once a month. The Durwan kept a small book in which he noted receipts. The plaintiffs kept a small box. When accounts were settled entries were made in the big book maintained by the plaintiffs.”

Ebrahim himself, the first defendant, says :

“ * * we settled accounts once in 10 days or once in 2 or 3 months.”

Now that is really the whole of the evidence so far as it has been given in this case ; but, having regard to the real point which has emerged, I cannot say that it is either very explicit or very helpful.

Having explained, therefore, what Exhibit A is and the circumstances in which it came into existence as well as I can I must now refer for a moment to Article 1 of the First Schedule to the Act. In order to bring a document within the mischief of this Article what has to be established is that it is an acknowledgment of a debt created in order to supply evidence of such debt. When this case was first opened I was inclined to take a strong view that where you find a document of any kind with a balance struck and a debtor's signature attached to it, it must necessarily be an acknowledgment of a debt. But having regard to the authorities that I have been referred to and to a further consideration of

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Article 1 I have been reluctantly compelled to admit that the question is not quite so easy to decide.

It may well be that the view which I have admitted I was in the first place inclined to take contains part of the truth. It may well be that, when you find a document either in the form of this Exhibit A or in one of the numerous other forms upon which litigation has arisen in the various cases to which my attention has been drawn, the signature of a debtor attached to a statement does, among other things, amount to an acknowledgment of a debt. But it has to be appreciated—and it is not easy to appreciate at first sight—that this Article requires something more than an acknowledgment of a debt. It requires an acknowledgment of a debt brought into existence in order to supply, that is for the purpose of supplying, evidence of such debt. When a man writes a figure on a piece of paper and signs it it may well be that in one sense that is an acknowledgment of a debt ; but the purpose for which he writes it may or may not be the purpose of furnishing his debtor with evidence of the debt. There may be a hundred and one reasons why such a piece of paper is brought into existence. I have endeavoured in saying that to express in my own words what is shortly and better expressed in the words of Sir Walter Schwabe C.J. of Madras in the case of *Surjimmull Murlidhar Chandick v. Ananta Lal Damani and another* (1). He says :

“ The first question that arises is whether any particular document is given to supply evidence of the debt. It is quite clear to my mind on the authorities that the question is whether it is given with the dominant intent to supply evidence of the debt and it has been held that where the document contains other entries from which it is right to deduce that the intention is to arrive at a statement of account or to put on record payments on

(1) (1923) I.L.R. 46 Mad. 948.

either side, the intention to be inferred from the sending of the document, although it contains a balancing item at the end, is not to supply evidence to the creditor."

It is the first part of that passage to which I am drawing attention, namely, that the primary question is whether the document was brought into existence with the "dominant intention" of supplying evidence of the debt.

The fact that the document is apt to serve other purposes does not absolve the Court from enquiring, as it is enjoined to do by Article 1, what was the purpose for which it was meant; that is the reason why I have endeavoured to point out that a document may well be a document which is an acknowledgment of a debt and may still not be a document which is an acknowledgment of a debt within the meaning of Article 1. Even though it is an acknowledgment of a debt it does not come within the mischief of Article 1 unless it was created in order to supply evidence of such debt; so that what we have to seek here is the intention of the plaintiffs and the defendants in bringing into existence Exhibit A.

I have been referred to a large number of authorities, but I may say at once that, except in so far as any authority contains any statement of principle other particular cases are not of assistance in this case; each case must depend upon its own facts as was pointed out by Mr. Justice Woodroffe in the case of *Galstain v. Hutchison* (1). The learned Judge in that case in his opening words points out:

"On the question whether a particular document in suit amounts to an acknowledgment of a debt one decision can hardly be an authority for another, for each case must depend on its own circumstances."

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With that I respectfully agree and it is for that reason that I do not propose to refer to the many authorities which have been cited to me.

I have to search for the intention with which Exhibit A was created. Mr. Chari, on behalf of the respondents to this appeal, says that I cannot reasonably find that Exhibit A was created for any other purpose than the purpose of furnishing evidence of a debt. Mr. K. C. Sanyal on the other hand, on behalf of the appellants, says that the view I should take upon the facts and the history of this particular case is that the series of documents, of which Exhibit A contains three, are merely periodical documents brought into existence for the purpose of record.

Now it has to be borne in mind in this case what the nature of the transactions was. On the one side, namely on the plaintiffs' side it is quite definite that particular sums of money were advanced from time to time. But on the defendants' side entries it is not quite so clear cut. The defendants were supplying hides apparently through the plaintiffs' durwan who entered the number of hides received in his note book. No particular price was fixed for the hides, but they were to be supplied at the market price less one anna and bearing that in mind, it supplies, in my opinion, an intelligible reason why, at the end of each month, a statement should be made of the hides supplied ; because the defendants could then see first of all the number of hides for which they had been given credit and the price at which they have been brought into the accounts. That is the first point which has struck me.

The second point is this. As I have already pointed out more than once, this was a running account and the last of these accounts, although it happens to coincide with the date on which the agreement seems to have terminated, is no different from any of the earlier

accounts. If, therefore, we take, for instance, the January account, it is dated the 31st of January. Whether or not it was actually signed on that date I do not know. But bearing in mind that these transactions were continuing transactions and went on almost from day to day one has to appreciate that at no given moment except possibly upon the very day on which the document was signed is this document evidence of what the defendants were actually owing to the plaintiffs. I am not sure whether I have made the point clear. For instance if on the 15th of February 1934 the plaintiffs had been minded to sue the defendants, then on that date the first of the documents comprised in Exhibit A is not evidence of what the debt was. There is no doubt that it is capable of being used as evidence of what was owing on the 31st of January. But at no given point except possibly at the moment at which it is signed is it evidence of any particular debt.

Now bearing these considerations in mind, bearing in mind the course of business between these two parties, bearing in mind that these transactions were continuing transactions and bearing in mind that at no point of time was it ever contemplated that any of these particular balances, except possibly the last one, would ever become payable in cash by the defendants to the plaintiffs, it seems to me to be impossible for me to say that the real purpose for which these documents were brought into existence was the supply of evidence of an actual debt. As I have said, if you take any one of the balances other than the last one on the 31st of March 1934, it would be quite impossible for anybody to contend that it was ever within the contemplation of either party that the actual sum so stated as the balance would be paid by the defendants to the plaintiffs. Take the January one : nobody contemplated that Rs. 468-3-0 should be paid by the defendants to the plaintiffs. It

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was contemplated by the parties that the transaction would go on and that the balance would in the course of time become more or less than that and it seems to me that the balance was struck and signed, not for the purpose of being evidence that that money was then due, but simply as one of a series of statements of account which, for the convenience of the parties, were exchanged at fixed intervals. That seems to me to be the real purpose of Exhibit A. The question is not free from difficulty and I have had to determine it as best I can. I regret to take a different view from the view taken by the learned Judge in first appeal because as I have said I think it admits of much argument each way. Having taken that view, I am bound to come to the conclusion that the document in question was wrongly excluded from evidence by the Township Judge inasmuch as, in my opinion, it was not a document required to be stamped under Article 1 of Schedule I. It seems to me, therefore, that the proper course to take is to allow this appeal and to remand the case to the Township Judge now to be tried upon the footing that the document has been wrongly excluded from evidence and should now be admitted. It will be remanded to the District Court to retry it upon all the issues other than issues Nos. 1, 2, 3, 4 and 11.

The costs of this appeal which I assess at five gold mohurs will be costs in the suit.