

of the Magistrate to re-summon these witnesses was unreasonable and had prejudiced the trial. This opinion, however, is *obiter*, because the learned Judge accepted the appeal on the merits and finished by saying: "If I had held that there was a *prima facie* case against the appellant, I would have considered the necessity of allowing the applicant an opportunity to further cross-examine the prosecution witnesses, but, in view of my opinion on the merits of the case, it is not necessary to do so." It is, moreover, clear that the opinion was expressed on the particular facts of that case, which were more favourable to the accused than the present facts.

[*The remainder of the judgment is not required for the purpose of this report.—Ed.*]

A. N. C.

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**APPELLATE CIVIL.**

*Before Young C. J. and Abdul Rashid J.*

PUNJAB CO-OPERATIVE BANK, LAHORE

(PLAINTIFF) Appellant

*versus*

PARMA NAND AND ANOTHER (DEFENDANTS)

Respondents.

**Civil Appeal No. 53 of 1935.**

*Negotiable Instruments Act, XXVI of 1881, section 76 (c) : Letter confirming the loan (made on a promissory note)—whether implies a promise to pay — and renders presentation of the note for payment unnecessary.*

*Held*, that the word 'promise' as used in section 76 of the Negotiable Instruments Act may be either an express or implied promise and, therefore, the letter by the defendant 'confirming' the loan made to him on a promissory note, payable on demand, amounted to 'a promise to pay' within the meaning of clause (c) of the section, and rendered presentation of the promissory note for payment unnecessary.

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*Mani Ram Seth v. Seth Rup Chand (1), Kahan Chand Dularam v. Daya Ram Amritlal (2), and Fateh Chand v. Ganga Singh (3), followed.*

*First appeal from the decree of Lala Chhakan Lal, Subordinate Judge, 1st Class, Lyallpur, dated 12th December, 1934, dismissing the plaintiff's suit.*

ACHHRU RAM, for Appellant.

M. L. PURI, for Respondents.

The judgment of the Court was delivered by—  
YOUNG C. J.—The plaintiff, the Punjab Co-operative Bank, brought a suit against the defendant Parma Nand and another, on a promissory note for the sum of Rs. 5,097-6-0. Various issues were struck in the lower Court. The only point which is now at issue between the parties, is issue No.3: “Was the promissory note duly presented to defendant No. 1? If not, what is the effect?” The learned Judge in the Court below came to the conclusion that presentation was necessary and, secondly, that there had been no valid presentation, and dismissed the suit. The plaintiff appeals.

The sole question which we have to decide is the question whether the presentation of the promissory note under the circumstances of this case was necessary.

The facts are that the promissory note was executed on the 16th March, 1928, and was as follows:—

“On demand I promise to pay to the Lyallpur Bank, Limited, or their order, within their office at Lyallpur, or Branch Office, Dera Ismail Khan, or Gujrat, the sum of (Rs.3,000) rupees three thousand only for value received, with interest, etc.”

(1) (1906) I. L. R. 33 Cal. 1047 (P.C.). (2) (1929) I. L. R. 10 Lah. 745.

(3) (1929) I. L. R. 10 Lah. 748.

And on the 13th of March, 1931, the Lyallpur Bank, Limited, predecessor-in-interest of the present Bank, sent the following telegram to the defendant :

“ Your promissory note limitation expires eighteenth March please confirm balance at Gujrat, otherwise instituting civil suit here positively wire reply Lyallpur Bank.”

On the same day the defendant replied by letter :—

“ Dear Sir, In reply to a telegram from your head office, I have the honour to inform you that the loan standing in my name is confirmed.”

Section 76 of the Negotiable Instruments Act, clause (c) runs as follows :

“ No presentation for payment is necessary as against any party if, after maturity, with knowledge that the instrument has not been presented, he promises to pay the amount due thereon in whole or in part.”

The question, therefore, that has been argued is whether the acknowledgment of the 13th of March, 1931, amounts to a promise to pay within the meaning of the Negotiable Instruments Act.

It has been decided in *Kahan Chand Dularam v. Dayaram Amritlal* (1) and *Fateh Chand v. Ganga Singh* (2), two cases heard by Benches of this Court, that an unconditional acknowledgment implies a promise to pay, and, in the latter authority, that a suit can be based upon such an acknowledgment. The Privy Council in *Mani Ram Seth v. Seth Rup Chand* (3) also held that an unconditional acknowledgment

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(1) (1929) I. L. R. 10 Lah. 745. (2) (1929) I. L. R. 10 Lah. 748.

(3) (1906) I. L. R. 33 Cal. 1047 (P.C.).

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implies a promise to pay. It is argued by the respondents here that the words " promises to pay " in the Negotiable Instruments Act cannot mean an implied promise. We cannot follow this argument. The word " promise " has a well-known legal significance. It is elementary that a promise may either be express or implied. The use of the word ' promise ' without any qualification obviously must import the ordinary meaning of the word ' promise ' in law. It is clear, therefore, in our opinion, that the word ' promise ' as used in section 76 of the Negotiable Instruments Act may be either an express or an implied promise. We must follow, therefore, the authority of the Privy Council and we agree with the decision of the two other Benches of this Court on this point.

We, therefore, hold that there has been a promise to pay the amount due within the meaning of section 76 (c) of the Negotiable Instruments Act. No presentation was, therefore, necessary in this case, and the suit must succeed.

We set aside, therefore, the decree of the lower Court and give the plaintiff a decree for Rs.5,097/6/- with costs and future interests at 6 *per cent. per annum* till the date of realization.

P. S.

*Appeal accepted.*