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donor or testator. Nothing is left in him. Until the defendant Anandibai dies, it cannot be known who will inherit the house. Vasudev, as one of her husband's sons, has only a *spes successionis*, "an expectancy of succession by survivorship," and such a hope or expectancy is not attachable under section 266 (*k*) of the Civil Procedure Code. The law upon which that exception is founded will be found in *Ram Chunder* v. *Dhurmo Narain*[1]. The case of *Annaji* v. *Chandrabai*[2] was different. There it was expressly found that the donor only gave to the donee a life estate. The reversion expectant on the determination of the life estate given to the donee was left undisposed of, and consequently remained vested in the donor, and was, therefore, as such held to be attachable. The fact that the donor only gave a *life* estate to the donee was the *ratio decidendi* in that case.

The decree of the appellate Court is, for these reasons, reversed, and that of the Subordinate Judge restored with costs throughout on the plaintiff.

(1) 15 Cal. W. R., F. B. R., 17. (2) I. L. R., 17 Bom., 503.

APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

1897.
November 23.

GOVIND GOPAL (ORIGINAL PLAINTIFF), APPLICANT, *v.* BALWANTRAO HARI (ORIGINAL DEFENDANT), OPPONENT.*

Promissory note—Express promise to pay.

A document is not a promissory note if it does not contain an express promise to pay.

APPLICATION to the High Court under its extraordinary jurisdiction (section 25 of the Provincial Small Cause Courts Act, IX of 1887) against the decision of Khán Báhádur M. N. Nanavati, Judge of the Court of Small Causes, at Poona.

Plaintiff sued in the Court of Small Causes, at Poona, to recover the sum of Rs. 351-12-0 alleged to be due on a kháta account.

* Application, No. 177 of 1897 under Extraordinary Jurisdiction.

The kháta was in the following form :—

"Dated 15th April, 1893, to Govind Gopal Phadke from Balwantrao Hari Raswadkar.

"(On debit side as follows:—) Rs. 300 cash in Surat currency have been received: for them interest at eight annas per cent. per mensem, having made an agreement of five months, have been taken—three hundred."

The above was stamped with a one-anna stamp. On its being tendered in evidence, an objection was taken that it was insufficiently stamped.

The Court allowed the objection and rejected the document, holding that it was a promissory note and not adequately stamped as such.

The plaintiff then applied for leave to amend the plaint and to sue for the amount as for money had and received. The Judge refused the application and dismissed the suit.

The plaintiff applied to the High Court and obtained a rule to set aside the order.

Purshotam P. Khare, for the applicant (plaintiff), in support of the rule.

Gangaram B. Rele, for the opponent (defendant), *contra*.

CANDY, J.:—The document in question is headed "kháta," that is, "account." Then it proceeds—"dated 15th April, 1893, to Govind Gopal Phadke from Balwantrao Hari Raswadkar." Then on the debit side occur these words (literally translated):—

"Rs. 300 cash in Surat currency have been received: for them interest at 8 annas per cent. per mensem, having made an agreement of five months, have been taken—three hundred."

We are unable to hold that this document is a promissory note. There is no promise to pay; and there is no authority for holding that an implied promise is sufficient to constitute an instrument a promissory note. The document is a receipt or an acknowledgment or an agreement. In either case the plaintiff was entitled to proceed with the suit.

The rule must be made absolute and the case remanded for the Small Cause Court Judge to proceed with it according to law. Costs to follow the result.

FULTON, J.:—As the document in question does not contain any express promise to pay, I do not think it is a promissory note. It

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appears to me to be simply an acknowledgment of liablity, and as such to be sufficiently stamped with one anna. I would accordingly reverse the decision and remand the suit for retrial on the merits. A day should be fixed for the hearing, and the Judge, after taking such evidence as the parties may tender, should proceed to determine whether this money is justly due by the defendant to the plaintiff. For this purpose I do not think that any amendment of the plaint is necessary, but if it were, it seems to me to be a case in which it might properly be allowed. Costs should follow the result.

Rule made absolute.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1897
December 6.

IN RE MAHA'RA'NA SHRI JASWATSANGJI FATESANGJI.*

Criminal Procedure Code (Act X of 1882), Sec. 133—River—Obstruction in a public river—Meaning of 'obstruction' as used in the section.

Section 133 of the Code of Criminal Procedure (Act X of 1882) contemplates not only that the way, river, or channel where an unlawful obstruction is made, must be one of public use, but also that the obstruction must be of that public use.

Where a dispute arose between the proprietors of two tálukdári villages situate on the banks of a river about the diversion of the course of the river by means of a dam and a trench made by one of them in the current of the river, and each tálukdár claimed the river as his own private property,

Held, that the Magistrate had no jurisdiction to interfere under section 133 of the Criminal Procedure Code (Act X of 1882).

THIS was an application under section 435 of the Criminal Procedure Code (Act X of 1882).

The applicant was the Thákor of Limdi, and proprietor of the tálukdári village of Wadhela in the Ahmedabad District.

The river Utavali separates the lands of this village from those of another tálukdári village called Návda, which belongs to one Latifkhan. The river forms the boundary between these two villages for some distance. It then bifurcates, one branch pass-

* Criminal Revision. No. 297 of 1897.