

CIVIL REFERENCE.

1904.
September 5.

Before Mr. Justice Chandavarkar, Mr. Justice Batty and Mr. Justice Aston.

VENKU RAMCHANDRASHET (PLAINTIFF) v. SITARAM
PANDURANG (DEFENDANT). *

Stamp Act (II of 1899), section 2 (5) (b)—Bond—Promissory Note.

The defendant passed to the plaintiff a document to this effect: "I have this day taken from you in cash Rs. 48 (forty-eight). I have received this amount. I shall repay this money without taking any objection, when you should demand [it]." The document was attested by two witnesses. It bore a one-anna adhesive stamp.

Held, on the construction of the document, that it was a bond within the meaning of section 2 (5) (b) of the Indian Stamp Act (II of 1899); since the document was attested and was not payable to order or bearer, and the executant obliged himself to pay the money to another.

THIS was a reference made by S. S. Wagle, Subordinate Judge of Málvan, under section 60 of the Indian Stamp Act (II of 1899).

The reference was in the following terms:—

"The plaintiff sues to recover from the defendant Rs. 48 principal and Rs. 2 damages, in lieu of interest, on a document executed by the defendant to the plaintiff on 13th November, 1903.

The following is a translation of the document:—

To

RAJESHIRI VENKU RAMCHANDRASHET ANDARI

[residing at the] village of Málvan.

The executant of [this] *Vayade Chitti* * [is] Sitaram Pandurang Prabhu Gaumkar, of Kandalgaum, residing at Kandal-

* A term meaning literally 'a written engagement with fixedness of term or period' (Molesworth), but usually employed in this part of the country to designate a promissory note.

gaum, this day staying at Málvan. I am executing the *Chitti* (note) as follows. I have this day taken from you in cash Rs. 48 forty-eight. I have received this amount. Therefore, I shall repay this money without taking any objection, when you should demand [it]. To this effect I have executed [this] *Vayado Chitti* of my free will and pleasure. [It is] true. Dated 13th November 1903. Written by self.

Attestations.

1. Balkrishna Sakharam.
2. Vinayak Shankar.

Sitaram

[Signed by]
Pandurang
in his own

Gaumkar,
handwriting.

The document bears an adhesive stamp of one anna.

The questions referred for the opinion of the Honourable the High Court are—

1. What is the nature of the above document ?
2. Whether it is sufficiently stamped ?

It is contended by the plaintiff's pleader that the document is a promissory note ; and is, therefore, sufficiently stamped. He relies upon the definition of the term ' promissory note ' contained in section 4 of the Negotiable Instruments Act (XXVI of 1881) and cites I. L. R. 8 Mad. 87 in support of his contention that the document, although attested, does not cease to be a promissory note.

My own opinion is that—

1. The above document is a bond.
2. It is not sufficiently stamped.

The document is governed by the Stamp Act of 1899. According to section 4 of it ' bond ' includes (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another.

' Promissory note ' means a promissory note as defined by the Negotiable Instruments Act, 1881, which definition is as follows :

A ' promissory note ' is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

In the Stamp Act of 1879, repealed by the present Act the definition of ' bond ' was precisely the same as in the present Act. That Act did not define ' promissory note.'

In I. L. R. 8 Mad., at page 89, the Madras High Court was considering two documents. One was attested and not payable to bearer or order. It was held to be a bond. The other was a promissory note payable to order. It was held to be not a bond, but a promissory note, although attested. It will be seen that this decision goes no further than the definition itself which excludes instruments payable to order or bearer, from the definition of ' bond.' I think the words ' not payable to order or bearer ' constitute the determinative factor in the definition. If the instrument is payable to order or bearer, it is a promissory

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note, although attested: if it is an instrument not payable to order or bearer it, if attested, is a bond. The document under consideration is attested, and is not payable to order or bearer. It is therefore a bond.

It is not the name given to an instrument that determines its character. The document considered in *Balkrishna v. Govind* (I. L. R. 8 Bom. 297) was called a promissory note. Yet being attested it was held to be a bond. In *Nuhanchand v. Ravji* (P. J. 1887, page 302) the document was called a *khata* and was a debit entry in a shop-keeper's book. Yet the Court held that if it was attested it was a bond. These were decisions under the Stamp Act of 1879.

It is contended for the plaintiff that the present Stamp Act, by introducing a definition of 'promissory note' effects a change in the law. I do not think it does. The present Act merely supplies an omission: it does not effect a change. It is said that a promissory note as defined by the Negotiable Instruments Act need not be payable to order or bearer; and therefore the document in question is a promissory note, though attested. I am not prepared to accept this argument.

The document under consideration being, in my opinion, a bond is not sufficiently stamped. It should be stamped as a bond. If it is also a promissory note, then section 6 of the Stamp Act (II of 1899) comes into operation and the document is chargeable with the higher stamp duty, which is that for a bond.

I however feel some doubt in the matter, and hence this reference. The questions are of importance as, I am told, documents like the one, which is the subject of this reference, are commonly accepted as promissory notes in this district."

Ráo Bahádur *Vasudeo J. Kirtikar*, Government Pleader, for Government.

CHANDAVARKAR, J.:—The Court thinks that the Subordinate Judge is right.

The document in question is attested, and is not payable to order or bearer; further, the executant obliges himself to pay the amount to another. It is, therefore, a bond within the meaning of clause (b) of sub-section 5 of section 2 of the Stamp Act (II of 1899).