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think that as regards Exhibit 44 the judgment of the lower appellate Court must be reversed.

Now Mr. Kelkar for the appellant is content to confine his claim to the property in Exhibit 44 and not to go into Exhibit 45. The lower appellate Court finds on page 2 that at some time prior to Exhibit 45 there must have been a separation between the brothers. It also appears to be clear that Bala's heir is his widow and not the plaintiff. I think, therefore, our decision must be confined to the lands in Exhibit 44, i.e., the property mortgaged by Exhibit 44, but it should be without prejudice to any question arising or that may arise under Exhibit 45.

As regards the principal sum due under the mortgage, I think the decree in effect though not in form should be for redemption of the mortgaged property on payment of the principal sum paid on the execution of Exhibit 44, viz., Rs. 100, with interest not exceeding the sum of Rs. 100.

I accordingly agree with the order which my brother Shah proposes to make including his order as to costs.

Decree set aside.

R. R.

APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Acting Chief Justice, and Mr. Justice Shah.

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January 28.

DHONDIRAM CHATRABHUJ MARWADI (ORIGINAL PLAINTIFF), APPELLANT *v.* SADASUK SAVATRAM MARWADI (ORIGINAL DEFENDANT), RESPONDENT.*

Promissory note—Promissory note executed in Hyderabad State but stamped with British India Stamp—Hyderabad State Stamp Act, section 35—Suit on the promissory note in British Indian Court—Maintainability of suit in British India—Lex Fori—Lex Loci Contractus.

* Second Appeal No. 696 of 1916.

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A promissory note was executed in Hyderabad State. It was stamped with a British India stamp. A suit having been brought on the promissory note in a Court in British India, it was contended that the promissory note not having been stamped with the stamp required by the laws of the Hyderabad State, no suit will lie upon it in the British Indian Court.

Held, that though the promissory note be inadmissible in evidence under Hyderabad State Stamp Act, that law did not declare the agreement as void and the agreement could, therefore, be sued upon and enforced in a Court in British India.

Bristow v. *Sequeville*[1], relied on.

If the law of the foreign country in which the document was executed provides no more than that the agreement shall not be received in evidence, because it is not stamped, then the agreement may be sued upon and enforced in a Court in British India; but if the law of the foreign country provides that, by reason of the want of stamp, the agreement itself which is contained in the unstamped document shall be void, then the plaintiff cannot succeed in a Court of British India.

SECOND appeal against the decision of R. B. Gogte, First Class Subordinate Judge, A. P., at Nasik, reversing the decree passed by S. A. Gupte, Second Class Subordinate Judge at Malegaon.

Suit on a promissory note.

Plaintiff, a Marwadi, residing in H. H. the Nizam's territories, brought a suit in the Second Class Subordinate Judge's Court at Malegaon, Nasik District, for the recovery of Rs. 4,269 due on a promissory note dated August 21, 1913. The promissory note was executed by the defendant—a resident in British India—at Vakali in H. H. the Nizam's territory. It did not bear the stamp of Nizam's State. It was executed on a paper stamped with one anna stamp of British India.

The defendant contended that the plaintiff could not sue on the promissory note in British India.

The Subordinate Judge allowed the plaintiff's claim.

On appeal the decree was reversed by the First Class Subordinate Judge, A. P., holding that the promissory

[1] (1850) 5 Exch. 275.

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note not being stamped in accordance with the provisions of the Nizam's Stamp Act was void and therefore could not be made the basis of a claim anywhere.

The plaintiff appealed to the High Court.

G. S. Rao for the appellant :—The lower Court held that the promissory note was invalid as it did not bear the Nizam's stamp and the suit could not lie in a British Indian Court upon a document which was invalid according to the law of the place where the contract was made. We submit that the place of performance or the place where the suit is brought governs the rights of the parties, in other words, *lex fori* which should be looked to in determining the question between the parties : see *Bell & Co.* v. *Antwerp, London and Brazil Line*[1] ; *Don* v. *Lippmann*[2].

Whether the promissory note should have been stamped by the Nizam's or British stamp is a question of procedure and the promissory note in this case having been stamped with a British stamp it is governed by the Civil Procedure Code, 1908. The promissory note is payable on demand and does not fix the place of payment. That being the case the creditor has a right to demand payment wherever he chooses and the debtor is bound to pay at the place where the demand is made. By instituting a suit in British India he demands payment in British India and the debtor is bound to pay there. The cause of action arose in British India: see section 20 of the Civil Procedure Code, 1908. The Indian Contract Act, 1872, makes no provision as to the place where a contract is to be enforced when the payment is to be made on demand. Section 49 of the Act does not apply to this case. It would be governed by general principles : see *Kedarmal* v. *Surajmal*[3].

[1] [1891] 1 Q. B. 103 at p. 107. [2] (1837) 5 C & F. 1 at p. 13.
[3] (1908) 33 Bom. 364.

As regards the stamp laws when the suit is brought in British India, the British Indian Court is not bound to respect Nizam's laws. It lay on the defendant to prove that the promissory note was not valid according to Nizam's laws and he has failed to prove it: see *Raghunath* v. *Varjivandas*[1]. When a promissory note is produced in British India it is bound to comply with the formalities of the Indian Stamp Act, 1899. Section 19 of the Stamp Act says that the bill of exchange must bear British stamp. The promissory note in suit having been stamped with a British Indian stamp complies with the formalities of British laws and should be acted upon whatever the Nizam's law may be: see *James* v. *Catherwood*[2]; *Bristow* v. *Sequeville*[3]; *Alves* v. *Hodgson*[4]; *The British Linen Company* v. *Drummond*[5]; *In the goods of Mc Adam*[6].

The only section of the Nizam's Stamp Act relied upon is section 35, but according to that section the promissory note not duly stamped is only inadmissible in evidence. There is no section to show that the promissory note would be void if not stamped according to the Nizam's laws.

Coyajee with *A. G. Desai* for the respondent:—The question arising in this case is whether there is an agreement which can be enforced in a British Indian Court. We submit there is none. It was made within H. H. the Nizam's dominions. If by the law obtaining in that State the agreement is void unless written on stamped paper, then it ought to be held void everywhere. It is only matters of mere procedure, including the question of admissibility of evidence, that are governed by *lex fori*. There is a well-drawn distinction between the mere question of admissibility of

(1) (1906) 30 Bom. 578.
(2) (1823) 3 D. & R. 190.
(3) (1850) 5 Exch. 275.
(4) (1797) 7 T. R. 241.
(5) (1830) 10 B. & C. 903 at p. 912.
(6) (1895) 23 Cal. 187.

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evidence, and the giving effect to a document as the foundation of a suit: see *Alves* v. *Hodgson* [1]; *Clegg* v. *Levy* [2]; Story's Conflict of Laws, 8th ed., paras. 260 and 631; Halsbury's Laws of England, Vol. VI, p. 236. Section 35 of the Nizam's Stamp Act makes the document inadmissible in evidence for any purpose, being not stamped as required by that enactment. It cannot be made the foundation of a suit in the Nizam's Court; neither therefore can it be so in a British Indian Court: see *Amina Begum* v. *H. H. The Nawab of Rampur* [3].

BATCHELOR, ACTING C. J:—The plaintiff, who is a Marwadi, resident in the territories of His Exalted Highness the Nizam, sued the defendant, a Marwadi, resident in British India, on a promissory note dated the 21st of August 1913. The suit was brought in the Court of the Subordinate Judge at Malegaon in the Nasik District. The promissory note is stamped with the stamp which would have been required in British India. The note was executed in Hyderabad State, and does not bear the stamp which is required by the laws of that State. On this ground the defendant has claimed that the suit will not lie in the British Indian Court, and he has succeeded in this contention in the lower Court of appeal. It appears to me that the learned Judge below was wrong in the view which he took upon this point, and that the question is settled for us by the decision in *Bristow* v. *Sequeville* [4]. There Rolfe B., in delivering the judgment of the Court, said: "I agree that if for want of a stamp a contract made in a foreign country is void, it cannot be enforced here". He continued, referring to *Alves* v. *Hodgson* [5]: "If that case meant to decide, that where a stamp is required by the revenue laws of a foreign State before a document can be

(1) (1797) 7 T. R. 241.
(2) (1812) 3 Camp. 166.
(3) (1911) 33 All. 571.
(4) (1850) 5 Exch. 275.
(5) (1797) 7 T. R. 241.

received in evidence there, it is inadmissible in this country, I entirely disagree". The words that Lord Kenyon, in *Alves* v. *Hodgson*[1], is reported to have used are these: "It is said that we cannot take notice of the revenue laws of a foreign country; but I think we must resort to the laws of the country in which the note was made, and unless it be good there, it is not obligatory in a Court of law here". These words must now be understood subject to the interpretation placed upon them in the Court of Exchequer. The argument in *Bristow's case*[2] further explains the view which the Court took. In the course of that argument Pollock, C. B. referred to *James* v. *Catherwood*[3] and continued: "There the defendant's counsel objected, that certain receipts for money lent in France were inadmissible, and offered to show that, by the law of France, such receipts required a stamp; but Abbott C. J. admitted them; and, on motion for a new trial, said, 'this point is too plain for argument. It has been settled, or at least considered as settled, ever since the time of Lord Hardwicke, that, in a British Court, we cannot take notice of the revenue laws of a foreign State. It would be productive of prodigious inconvenience, if, in every case in which an instrument was executed in a foreign country, we were to receive in evidence what the law of that country was, in order to ascertain whether the instrument was valid or was not valid'".

Clearly, therefore, as I understand this authority, the decision is to this effect that, if the law of the foreign country in which the document was executed provides no more than that the agreement shall not be received in evidence, because it is not stamped, then the agreement may be sued upon and enforced in a Court in British India; but if the law of the foreign country provides that, by reason of the want of stamp,

(1) (1797) 7 T. R. 241. (2) (1850) 5 Exch. 275.
(3) (1823) 3 D. & R. 190.

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the agreement itself which is contained in the unstamped document shall be void, then the plaintiff cannot succeed in a Court of British India. That would be manifestly so, because *ex hypothesi* there would be no contract on which he could succeed. Now in the particular case before us, the only evidence which we have as to the provisions of the law of the Hyderabad State in regard to such a document as this, is contained in section 35 of the Stamp Act of that State, which is a mere translation into Urdu of the provisions of section 35 of our own Stamp Act of 1899. It appears to me that if the Legislature had had the judgment of the Court of Exchequer precisely in view, they could hardly have followed more closely the line of distinction which that Court adopted, for in section 35 of the Stamp Act, what is provided is, that "No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped," that is to say, the Legislature of Hyderabad has provided that the unstamped instrument shall not in any circumstances be receivable as evidence. But the law does not declare that the agreement is void because it happens to be contained in an unstamped instrument.

On these grounds, I am of opinion that the appeal must be allowed, and since no other defence to the claim was made in the lower Court of appeal, I think the decree must be reversed, and the plaintiff's claim must be decreed with costs throughout.

SHAH, J. :—I am of the same opinion.

Decree reversed.

J. G. R.