

Before Mr. Justice Phear and Mr. Justice Morris.

NANDAN MISSER (PLAINTIFFS) v. CHATTERBATI (DEFENDANT).\*

1874  
April 20.

*Stamp Act (XVIII; of 1869), s. 28—Promissory Note—Admissibility in Evidence—Payment of Penalty.*

THIS was a suit to recover Rs. 2,040, being money lent by the plaintiff to the defendant, together with interest thereon. In support of his claim, the plaintiff in his plaint set out the following document dated the 5th of Kartik 1277 F. S. (25th October 1869) made by the defendant in his favor:—  
“Whereas I (defendant) have borrowed Rs. 1,500 of the Company's coin from you without interest, without a bond, hence I declare that I shall repay on or before the 15th Falgun Suddi the whole amount in question in one lump, and take back this *Chittha*; should I fail to repay the amount in question on the above date, I will pay interest at 1 per cent. per mensem from the 1st of Chaitra Buddi, payment month after month. Therefore I write this *chittha* for the loan (*dastgardan*) without a bond that it may be of service in future.”

This document was unstamped, and the defendant in her written statement pleaded *inter alia* that, under s. 30 of Act X of 1862, the Stamp Act in force at the time of its execution, it was inadmissible in evidence.

For the plaintiff it was contended that it was admissible on payment of the penalty provided by the Act.

The Judge refused to admit the document in evidence on the payment of the penalty, holding that, under s. 28 of Act XVIII of 1869, he had no power to do so; but left it optional with the plaintiff to proceed with his claim on other evidence.

The plaintiff appealed to the High Court.

Baboo Mohesh Chunder Chowdhry and Messrs. Trotman and Chatterjee for the appellant.

Baboo Hem Chunder Banerjee and Chunder Madhub Ghose for the respondent.

The judgment of the Court was delivered by.

PHEAR, J.—The only question that we have to decide upon this appeal is the question whether or not the Judge was right in holding that s. 28 Act XVIII of 1869, prevented him from allowing the document called the *chittha* to be stamped, and to be admitted in evidence upon payment of sufficient penalty.

\* Regular Appeal, No. 171 of 1873, against a decree of the Officiating Additional Judge of Zilla Tirhoot, dated the 1st May 1873.

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Mr. Trotman has asked us to hold that, because the document itself was executed before the date when Act XVIII of 1869 came into operation, therefore s. 28 of the Act does not apply. But it seems to us that this contention is not just, and that the Judge was bound to comply with the Act, and had no authority to admit an unstamped document in evidence, excepting under the conditions prescribed in Act XVIII of 1869. The document itself was in these words (The learned Judge read the document and continued):—In effect it seems to us that this document is nothing more than a promise to pay money at a specified period. It may concisely be put into this form,—for value received I undertake to pay you Rs. 1,500 on or before the 15th Falgun next, and interest thereon from the 1st Chaitra if not paid before. And if we consider it in this form, we think there can be no doubt that it is simply a promise to pay money at a future time.

Mr. Trotman somewhat ingeniously argued that we might treat the contract exhibited by this *chittha* as being one in which there was a condition of defeasance if the money was paid before the 15th Falgun, and so treat it as if it were a bond. But we cannot take this view. It appears to us that the *chittha* is in substance a promissory note within the words of s. 28, Act XVIII of 1869, and therefore the Judge had not power to allow it to be stamped. In this view we dismiss the appeal with costs.

Before Mr. Justice Markby and Mr. Justice Mitter.

1874

Aug. 3.

ASGAR ALI HOWDERY (DEFENDANT) v. MAHABHAT ALI (PLAINTIFF).\*

*Fraudulent Representation—Contract of Marriage, Breach of—Damages—Marriage Presents, Suit to Recover Value of.*

A entered into a contract with B for the marriage of his daughter C. The marriage was duly performed, but C was never sent to the house of B, and B thereupon instituted a suit to compel C to live with him; but the suit was dismissed on the ground that the marriage was invalid, it being found that C was of age at the time of the marriage, and that her consent was not given. In a suit brought by B against A to recover as damages the value of certain presents he alleged he had made to C's family in consideration of the marriage, *Held*, that the plaintiff was not entitled to recover, unless he could show fraudulent representations on the part of the defendant in consequence of which he was induced to contract the marriage and incur the expenses sought to be recovered. The case was remanded for the trial of the issue of fraud.

THE present suit was instituted by the plaintiff for the recovery as damages of the value of certain presents which he had made to the defendant's family

\* Special Appeal, No. 1852 of 1873, against a decree of the Additional Subordinate Judge of Zilla Chittagong, dated the 29th May 1873, affirming a decree of the Munsif of the Sudder Station of that district, dated the 25th March 1873.