Before Sir Barnes Peacock, Kt., C. J., and Mr. Justice Macpherson.

GOMEZ (APPELLANT) *v.* YOUNG AND OTHERS (RESPONDENTS.)*

1869
April 12.

Promissory Note—Interest—Stamp—Act X. of 1862, *s.* 22.

Sec. 23 Act 2. 1878

A promissory note is sufficiently stamped, if the stamp covers the principal sum named in the note, without reference to the interest.

THIS was a suit to recover Rs. 1864, the principal and interest due on a promissory note made by the defendants in favor of the plaintiff. The promissory note in question purported to be for the payment "to the plaintiff, 12 months after date of Rs. 1,000, with interest thereon at the rate of 3 per cent. per mensem from the date thereof." The defendants, in their written statement, objected that the note was insufficiently stamped, on the ground that the stamp should have been of sufficient value to cover the amount of both the principal and interest.

PHEAR, J.—After giving the best consideration I can to the words of the Act, and after some consultation with one of my brother Judges, I am of opinion that section 22 of Act X. of 1862 applies to the promissory note in this case. This promissory note is clearly equivalent to a bill of exchange; for it is a negotiable instrument payable to order, and if endorsed, it would be strictly an order for money within the words of the section. But had I thought otherwise, inasmuch as the words of sections 15 and 17 are entirely permissive, I should not have exercised the discretion reposed in the Court by those sections in favor of a promissory note so exactly resembling a bill of exchange and, therefore, as I think within the mischief provided against by section 22, unless I was satisfied that the case was one of an exceptional character—and as to that, I have no evidence before me—to make me think this case is essentially different from the ordinary run of suits brought on promissory notes.

I have already said in the course of the case that I consider the note insufficiently stamped. I come to this conclusion, because I am of opinion that the interest which became due at

1869

GOMEZ v. YOUNG.

the date of maturity, must, for purposes of estimating the stamp, be added to the amount which is in terms secured by the note, otherwise the revenue might be materially defrauded by the simple expedient of obligations to pay money at a future date being drawn in a form, which makes a large portion of the debt take the shape of interest. I, therefore, feel bound to reject this promissory note as evidence; and as that is the sole foundation of plaintiff's suit, that suit must be dismissed, but without costs.

From this decision the plaintiff appealed.

Mr. *Woodroffe* (Mr. *Mendes* with him) for the appellant.—If a promissory note comes at all within Act X. of 1862, under section 22 of the Act, the proper amount of the stamp should be with reference only to the principal, and not with reference to the principal and interest. There is one case decided on the Indian Act, *Taracknath Palit* v. *Gladstone* (1). On the English Act 55, George III., c. 184, there have been several: *Prucssing* v. *Jag* (2); *Israel* v. *Benjamin* (3); *Wills* v. *Noott* (4); *Dixon* v. *Robinson* (5); *Foreman* v. *Jeyes* (6).

Mr. *Marindin*, for the respondent, contended that, by section 17 of Act X. of 1862, the order of the Court below was final. [*Woodroffe*.—The Court below holds that that section does not apply to this case.] The English and Indian Acts are different. The words "sum payable" in the latter, point to the time at which the instrument becomes due.

PEACOCK, C. J.—It appears to me that the promissory note was sufficiently stamped; it being sufficient to cover the principal sum secured by the note. The word "sum" in the English Act has been held to be the principal sum; and I see no difference between the words "for a sum payable" in the Indian Act, and the words "for the payment of the sum" in the English Statute. It appears to me to be a distinction without a difference.

(1) 1 Hyde, 178.
(2) 4 B. & Ald., 204.
(3) 3 Camp., 40.
(4) 4 Tyrwhitt, 726.
(5) 5 C. & P., 96.
(6) 5 C. & P., 419.

With reference to the losses to the Government revenue which it has been suggested might result from persons securing the principal under the name of interest, I confess I do not appreciate it. If the Government should suffer in its revenue by the adoption of such a practice for the purpose of defrauding the revenue for the sake of a few annas, it has the remedy in its own hands by amending the Act.

The revenue has not, as far as I am aware, been defrauded in England by the construction put on a corresponding provision of the Stamp Act. I should be very sorry to see justice defeated by holding that a man is to lose his claim by making a mistake as to the construction to be put on the Indian Act where the construction put upon it, is in accordance with the construction which has been put upon similar words in the English Statute. The greatest injustice might be caused if we were to hold that the plaintiff should lose his whole claim, simply because he made such a mistake.

I think the judgment of the learned judge should be reversed, and the plaintiff is entitled to a decree for the principal and interest shewn upon the note. The interest will be at the rate mentioned in the promissory note during the 12 months for which the note was to run, and at the rate of 6 per cent. per annum upon the principal from that time to the date of decree. Interest wil run on the principal and interest, from this date, at 6 per cent.

The costs of suit and of this appeal will be paid by all the defendans, to be taxed on scale No. 1.

MACPHERSON, J.—I am of the same opinion.

Attorney for the appellant: Mr. *Leslie*.

Attorney for the respondent: Mr. *Paliologus*.