B. L. R. Vol. V, p. 103.

(Original Civil.)

The 12th January 1870.

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

CHANDRAKANT MOOKERJEE *(Appellant)*,

versus

KARTIKCHARAN CHAILE and another *(Respondents)*.

Stamp—Promissory Note.

A. B., by an instrument in writing, dated 6th August, promised to pay C. D., "on demand," rupees 4, 310-13-3. In the margin of the instrument was written "due 30th August," and annexed to A. B.'s signature, was the following memo. :—"The sum of rupees 4,310 12 6 only; forty-five days from the 5th of August." *Held* that the instrument was properly stamped as a promissory note payable on demand, and ought to have been admitted in evidence.

Per PEACOCK, C. J.—A promissory note payable on demand ought to be stamped as such, notwithstanding there may be a collateral agreement between the parties that the holder will not present it for a given time or if paid on demand that the (maker) shall be entitled to discount.

THIS was an appeal from the decision of Mr. Justice Phear refusing to admit a document as evidence, on the ground of its being insufficiently stamped.

The document in question was as follows :—

"*Calcutta 6th August* 1868.

Chit No. 3114.

Contract No. 1087, dated 23rd May 1868.

Rs. 4,310-13-3.

On demand, we, Kartik Chaile and Kedarnath Dey, promise to pay to Messrs. Watson, Green and Hart, or order, the sum of rupees four thousand three hundred and ten, annas thirteen, and pie three only, with interest, at the rate of 12 per cent. per annum, from 30th August 1868, being the value of the goods delivered by them to us, *viz.*, ex *City of Benares*, C. W. J. G. H., 210, 209, 200, 196, 207, 199, 208, 211, 220, 212, 215, 217 ; twelve bales Mule Twist, No. 40, 12,000 morahs, at 6 annas per morah.

In the margin. No. 5154.

Due 30th August.

Chit No. 3114.
Sale No. 1087.
Date, 6th August 1868.

Account of Kartik Chaile and Kedarnath Dey.

Through price of 12 bales of Mule Twist, No. 40, consisting of 12,000 morahs, at 6 annas	4,500	0	0
Allowance at 3 pie per morah	187	8	0
	Rs. 4,312	8	0
Less deduction ...	1	10	9
	Rs. 4,310	13	3

SRI KARTIKCHARAN CHAILE,
SRI KEDARNATH DEY,
by
SRI MADAB CHANDRA DUTT.

The sum of four thousand three hundred and ten rupees, twelve annas, and six pie only;—forty-five days from the 5th of August.

(On back).

Paid on the 7th September, through B. N. Mookerjee, company's rupees 1,000."

This was stamped with a one anna stamp, as a note payable on demand. The objection was taken, and allowed by PHEAR, J., that it was inadmissible as evidence, by reason of its not being properly stamped, it being on the face of it a note payable not on demand, but forty-five days after sight. PHEAR, J., also refused to admit it as an agreement, on the stamp penalty being paid.

Mr. Graham (with him *Mr. Jackson*), for the appellant, contended that the note was on the face of it, a note payable on demand. The evidence in the case also showed it to be a note payable on demand, but subject to discount, if paid before forty-five days had expired, and bearing interest if paid afterwards. Further, that the words at the latter part of the note, were no part of the note itself, but merely referred to a collateral condition.

Mr. Kennedy (with him *Mr. Bonnerjee*), for the respondent, contended that the words at the end of the note were a part of the note itself, and showed clearly that the instrument was never intended to be a note payable on demand. *The Eastern*

Financial Association v. *Pestonji, Cursetji, Shroff* (1). [PEACOCK, C. J., referred to *Fanshawe* v. *Peet* (2)]. If the note had been sued upon before the expiration of forty-five days, the Court would not have enforced payment, but would have incorporated the qualification which appeared on the face of the note. [*Peacock, C. J.*—The qualification may refer not to what is written in the body of the note, but to what is written in the margin]. I contend that which is written in the margin should be incorporated in the body of the note. The note is not evidence of an account stated—*Green* v. *Davies* (3)—and the document is clearly not an agreement under the terms of the Stamp Act X of 1862. The evidence shows that it was an attempt to avoid the stamp law, and for this reason the Court would not allow it to be stamped even if the 22nd section of the Stamp Act, which prohibits the stamping of an instrument at the time of trial, did not exist.

Mr. Graham was not called on to reply.

Peacock, C. J.—It appears to me that the note in question ought to have been admitted in evidence and should not have been excluded on the ground of not being sufficiently stamped. It appears to me that, in applying the Stamp Law, the stamp must be paid upon what is stated in the instrument, and cannot depend upon collateral evidence. If a man signs a promissory note payble on demand, it appears to me that the note ought to be stamped as a note payable on demand, although there may be a collateral agreement between the parties that the holder of the note will not present it for a given time; or, if paid on demand, that the maker of the note shall be entitled to a certain amount of discount to be deducted. In the present case, according to the evidence, notes payable on demand were given in respect of all the other goods which were sold. The note in question expressly declares that the defendants, on demand, promise to pay to Messrs. Watson, Green and Hart, or order, the sum of Rs. 4, 310-13 3, with interest, at the rate of 12 per cent. per annum, from the 30th August 1868. In the margin of the note it is stated that something will be due on the 30th August, according to Chitty No. 3114, and contract of Sale No. 1087. It appears probable that the sum mentioned at the foot of the signature was intended to correct that mistake, and to point out that, according to the real transaction between the parties, what may be called the price of the goods was not to be due on the 30th August, *i. e.*, was payable without any deduction for discount.

(1) 3 Bom. H. C. Rep., 9.
(2) 2 H. & N., 4.
(3) 4 B & C, 235, 242.

There may be a partial or varying acceptance of a bill of exchange, but there is a great distinction between a bill of exchange and a promissory note. A bill of exchange is a request, by one man to another, to pay a certain amount, and the acceptor of the bill may, according to the custom of merchants, accept only for part of the amount which he is requested to pay, or he may accept payable at a different time from that at which he is requested to pay. And that seems consistent with reason, but when a man signs a promissory note, all that he promises to do is at his own discretion. He not varying that which another, man requests him to do. He cannot, therefore, with any reason, state in the body of the note that he will do one thing, and by a memorandum annexed to his signature declare that he intends to do another thing. In this case the defendants expressly promised to pay, on demand, a certain sum of money, but to their signature they annexed the following words: "The sum of four thousand three hundred and ten rupees, twelve annas, and six pie only" (which is a different sum from that stated in the body of the note), and "forty five days from the 5th of August" (which is also a different date from that stated in the body of the note). They do not say that they intend that the note should be payable forty-five days after date for the sum of rupees 4,310 12-6; and they do not say:—"Although we stated one thing in the body of the note, we intend to state a different thing in the memorandum annexed to the signatures." The memorandum annexed to the signatures is, therefore, ambiguous, to say the least of it, and may refer merely to the memorandum in the margin which specifies the contract under which the note was given.

In the case of *Fanshawe* v. *Peet* (1), to which I referred in the course of the argument, Mr. Baron Martin said that, "at the trial, after consulting my brother Crompton, I thought that, if a drawee intends to qualify his acceptance, he must do so in

(1) 2 H. & N., 1.

unambiguous language." The present case is still stronger, being the case of a promissory note. If the defendants by their signature intend to say that what they promise to do is to pay the amount annexed to their signature at the date mentioned in the memorandum, and that they are not bound by the terms in the body of the note, it follows that they ought to do so in the most unambiguous language. In this case I have shown that the memorandum at the end of the signature does not, in unambiguous language, state that the maker is not to be bound by what he has expressly declared in the body of the note which he has signed.

In the case of *Ferris* v. *Bond* (1), it was held that a note beginning in the body of it "I. A. B., promise to pay," and signed "A. B. or else C. D.," was a good note against A. B.; in other words, that the body of the note prevailed over the signature; consequently that it was not a note which in fact would be bad, that either A. B. or else C. D. was to be bound by it. It was held that the words "or else C. D." was only evidence against C. D. of a conditional agreement to pay, if A. B. did not.

In this case, I think, we may fairly and reasonably hold that the words annexed to the signature were not sufficiently clear to show that the signer of the note intended to do that by his signature which was expressly at variance with what he was stated to have promised in the body of the instrument.

I think that the Court is bound to put a reasonable construction upon documents in cases like this, and not to allow a man to use ambiguous language, for the purpose of getting rid of a contract upon the ground that it was not sufficiently stamped. It would indeed be very hard upon parties, if a law, which was made simply for the purpose of the revenue, should be so applied as to allow men to make contracts, and then to violate them. It appears to me that the decree ought to be amended, by adding to the amount of the decree the amount due upon this note, with interest thereon, at 12 per cent. per annum, from the 1st October 1868. The appellant to have his costs on scale No. 2.

Macpherson, J.—I admit that if it had been clear, from the words added by the person who signed the note, that his intention was that the note was not to be payable on demand, there would have been no promissory note at all. But I think it is extremely doubtful what was the real object in adding those words. Mr. Kennedy has contended that the way to read the note is by treating it as a note payable "at forty-five days' sight, on demand," or "on demand, after forty-five days,"—a reading absolutely inconsistent with the terms of the note as it originally stood. But it appears to me more probable that the intention was merely to show that interest was not to begin to run until after the lapse of forty-five days, or that if the money was paid before the lapse of forty-five days, discount was to be allowed. We have the evidence of the person who signed the note, and it appears that he himself did not know the meaning of the words which he added. Madab Chandra Dutt says, "I was servant of K. C. Chaile and Kedarnath Dey. I signed the promissory notes. I was servant of the firm from its commencement. I was the Gomastah. I was Gomastah to K. C. Chaile and Kedarnath Dey. I was Gomastah of the business of K. C. Chaile and Kedarnath Dey. Gadadhar Dey used to work. The business of K. C. Chaile and Kedarnath Dey used to be carried on by Gadadhar Dey. Gadadhar carried it on. This is signed by me. I was in the habit of signing promissory notes. Gadadhar told me to do so. I signed the two names to this by authority of Gadadhar Dey." Then, in answer to Mr. Kennedy, he says, "I wrote 'forty five days from 5th August.' I was told to do so. Gadadhar told me; I don't know the meaning of it. Gadadhar told me, and I wrote it. I know nothing about its meaning." On further examination by Mr. Kennedy, he says, I know the goods used to be purchased, and delivery taken. The terms were, money was to be paid forty-five days after the goods were brought; always forty five days after delivery. The note was signed on the goods being delivered. After the goods were delivered, the notes were brought to me, and I signed them. Money has been paid within the term, and discount allowed; and money has been paid after the term. If money was paid within forty-five days, discount was allowed. That was what I was told to write, and I wrote it. I wrote according to my directions."

So that, in the first place, he says he does not know what he meant; and in the second place he says that he meant that which is

(1) 4 B. & A., 679.

entirely opposed to what Mr. Kennedy contends that he may have meant. In my opinion there is nothing to lead me to suppose that he intended to alter the note from being a note payable "on demand" to a note which was not payable on demand. Therefore, I think the note is sufficiently stamped, and ought to have been admitted in evidence.

Attorneys for Appellants: *Messrs. Hatch* and *Hoyle.*

Attorneys for Respondents: *Messrs. Judge* and *Gangooly.*

B. L. R. Vol. V, p. 109.

(*Original Civil.*)

The 3rd February 1870.

Before Mr. Justice Macpherson.

ABBOTT *v.* CRUMP.

Partnership, Dissolution of—Adultery of Partner with Wife of Co-partner.

Adultery of one partner with the wife of his co-partner, is a sufficient ground for dissolution of the partnership.

THIS was a suit for dissolution of partnership, for an account, for the appointment of a receiver, and for an injunction to restrain the defendant from dealing in any way with the co-partnership business and effects.

The plaintiff and defendant entered into partnership, as chemists and druggists under the name of Crump, Abbott and Co., by articles of agreement dated the 10th September 1864, the partnership to continue for eight years from that date. This agreement was revoked by other articles of agreement dated the 13th of December, 1867, under which they entered into a fresh partnership for the remainder of the eight years, it being agreed that the defendant should have a ½ share and the plaintiff a ½rd share in the business. It was provided that the plaintiff should devote his time and attention to the business so that it should fully compensate for the share he took, and that the defendant should display such interest in the business as lay in his power, without detriment to his other prospects in life. It was also provided that the defendant should live and reside at his option in the upper floor of the business premises, and that the plaintiff should live with him, but should remove at the request in writing of the defendant. The plaintiff, on or about the 12th July 1869, discovered that the defendant was carrying on an adulterous intercourse with his wife, and thereupon wrote to the defendant through his attorneys asking that the partnership should be dissolved. Negociations were entered into between the partners for this purpose, but they were afterwards broken off. On the 29th of July 1869, the plaintiff filed a petition for a dissolution of his marriage on the ground of his wife's adultery with the defendant, and a decree *nisi* for dissolution of his marriage was made on the 20th December 1869. The material question in the case was whether the defendant's having committed adultery with the plaintiff's wife was sufficient ground for a dissolution of partnership.

Mr. Marindin (with him *Mr. Hyde*) for the plaintiff, contended that though adultery committed by one of the partners, "even of a most disgraceful and profligate description" with another man's wife, might be no ground for dissolving the partnership, —*Snow* v. *Milford* (1),—adultery by one partner, with the wife of his co-partner, was a sufficient ground for decreeing a dissolution of the partnership.

The defendant in person *contra.*

Macpherson, J.—In this case the first question is whether the fact of the defendant having committed adultery with the wife of the plaintiff, is a sufficient ground for the dissolution of their partnership. I readily admit that immorality generally is not a ground, and also that the mere fact of one partner committing adultery with other than the wife of another partner is no ground, but anything which makes it practically impossible for parties to join in the work of their partnership is a ground for dissolution, and it is one of the first principles that it should be so. Adultery has been proved, and a decree for dissolution of marriage made under such circumstances that it is absolutely impossible for the plaintiff to carry on any business with the defendant. I have no doubt whatever that adultery with a partner's wife is a sufficient ground for dissolution of the partnership; other facts

(1) L. R. 3 Weekly Notes, M. R. 62.