

This is the only question fairly before us in the Special Appeal, and we are clearly of opinion that the view taken by the District Judge is wrong. Had plaintiff not formally objected to the sale, no doubt could be entertained of his right to institute a suit to enforce as against the purchaser at the Court sale the prior sale to him by 1st and 2nd defendants; and the making and afterwards withdrawing the objection can have no greater effect than would have followed the abstaining from making it. What happened was that the sale took place and 3rd defendant purchased the right, title and interest of the 1st and 2nd defendants, and from the finding as to the sale to plaintiff it follows that, in so doing, he took no title, as the title was already vested in plaintiff.

1874.
June 3.
S. A. No. 279
of 1874.

We concur in the judgment of the Principal Sadr Amin that plaintiff is entitled to recover the property from the 3rd defendant, and we must reverse the decree of the District Judge and restore that of the Principal Sadr Amin.

The 3rd defendant will pay the costs throughout.

Appeal allowed.

Appellate Jurisdiction. (a)

Referred Case No. 17 of 1874.

CHINNA PERUMAL NAICKER

against

ANNAMMAL AND ANOTHER.

A promissory note upon a one anna stamp dated in August 1870 provided for the repayment of the amount mentioned in it on or before the 12th July 1871. In a suit upon the promissory note, *Held* that it was not receivable in evidence upon payment of a penalty.

THIS was a case referred for the opinion of the High Court by A. Annoosamy, the Subordinate Judge of Tinnevely, in Suit No. 1778 of 1873.

1874.
June 17.
R. C. No. 17
of 1874.

(a) Present : Morgan, C. J., Holloway and Innes, JJ.

1874.
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of 1874.

The following is the statement of the case.

“ The suit was brought for the recovery of Rupees 148-2-8 under a Promissory note, dated in August 1870, passed by Manthira Murthi (the deceased husband of 1st defendant and brother of the 2nd). The note is on a one anna stamp and provides for repayment of the money by the 12th July 1871.

The 2nd defendant's Counsel objected to the reception of the Promissory note in evidence on the ground of its not being engrossed on a two annas stamp under Section 1, Schedule I, Act XVIII of 1869, and therefore not being receivable in evidence under Section 28 of the Act.

Section 28 seems to me to apply to a Bill of Exchange, or Promissory note, or other instruments chargeable with the duty of one anna, but as the note now in question requires a stamp of two annas, the section is not in point, and I think the note is receivable on payment of the deficient stamp duty and penalty under Section 20.

The question for the decision of the High Court is whether the said Promissory note is receivable under the stamp law on payment of the deficient stamp duty and penalty. (a)

(a) The following are the provisions of the General Stamp Act (XVIII of 1869) which bear upon the question :—

Section 8. “ The holder of any bill of exchange or promissory note drawn or made out of British India, and not stamped as required by this Act, shall, before he presents the same for acceptance or for payment or endorses, transfers, or otherwise negotiates, such bill or note, affix thereto the proper adhesive stamp or stamps for denoting the duty with which it is chargeable under this Act.”

Section 19. “ Subject to the provisions contained in Section 26 no person taking a bill of exchange or promissory note requiring a stamp under Section 8, either in payment or as a security, or by purchase or otherwise, shall be entitled to recover thereon or to make the same available for any purpose, unless at the time when he so takes it, the proper stamp is affixed thereto and cancelled in manner directed by this Act.”

Section 20. “ When any instrument chargeable with stamp duty executed on paper not bearing the stamp required by the law in force in British India at the time of its execution is produced in a Civil Court, the Court, if satisfied that the omission to execute such instrument on paper bearing the proper stamp did not arise out of any intention to evade payment of the proper duty, and on payment of such duty, or, in the case of an insufficiently stamped instrument, of the sum required to make up the full amount chargeable on such instrument together with a penalty.”

* * * * *

No Counsel were instructed.

The Court delivered the following Judgments :—

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INNES, J. :—The words “chargeable hereunder with the duty of one anna” in Section 28 are not intended to qualify the words “any bill of exchange or promissory note.” The result is that Sections 20 and 24 are inapplicable not only to bills of exchange and promissory notes chargeable with a duty of one anna, but to all bills of exchange and promissory notes. Such instruments after execution can only be stamped, if at all, under the provisions of Sections 8 and 26.

The present Act in this respect follows the provisions of its predecessor, Act X of 1862, and the policy of stamp Acts in general with reference to bills of exchange. The Court, therefore, cannot admit the instrument under Section 20.

HOLLOWAY, J. :—The point has been already decided in Referred Case No. 7 of 1874.(a)

“ Shall certify by endorsement on such instrument that the proper stamp duty has been levied thereon * * *
“ Such certificate shall be conclusive evidence as to the amount of stamp duty leviable on such instrument, and the said instrument shall thereupon be admissible as if originally executed on paper bearing the proper stamp.”

“ Section 26(a). When any bill of exchange, promissory note, cheque, or order for the payment of money on demand by any banker or person acting as a banker chargeable hereunder with the duty of one anna comes to his hands unstamped, he may affix thereto the necessary adhesive stamp and cancel the same in the manner required by this Act.”

“ Section 28. Except as provided in Sections 8 and 26 no stamp shall be affixed to or impressed on any bill of exchange or promissory note or any instrument chargeable hereunder with duty of one anna subsequent to the execution thereof, nor shall the provisions of Section 20 apply to any such instrument.”

(a) Not Reported.