

attempt to enforce that instrument. It seems to me it clearly was such an attempt to enforce the instrument as under art. 93 obliged plaintiff to bring his suit within three years of such attempt. It is not necessary for the purposes of that article that the person who is to profit by that instrument should seek to obtain the entire fruits of it. It is quite enough in my opinion if, having obtained the instrument, he seeks to place himself in an advantageous position which but for the instrument he could not occupy. It clearly was the first advantage that Mr. Pogose could take by the enforcement of that instrument to have himself placed on the record of the appeal, in order to be benefited by the final decision if the appeal were dismissed. I think, therefore, that when he made that application, he attempted to enforce that instrument, and that the suit ought to have been brought within three years from the date of such attempt. On this ground I think that this appeal ought to be dismissed with costs.

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Appeal dismissed.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

CHAMPABATY (PLAINTIFF) v. BIBI JIBUN AND ANOTHER (DEFENDANTS).*

1878
 May 30.

*Stamp Duty—Penalty, Tender of—General Stamp Act (I of 1869),
 sched. ii, arts. 5, 11.*

An Appellate Court has no authority to direct the reception of an unstamped document to which the provisions of s. 20 of the Stamp Act (XVIII of 1867) apply, unless the amount of stamp duty and prescribed penalty was tendered when the document was first offered in evidence and rejected.

THIS was a suit to recover Rs. 7,729-12-3, principal and interest, due on the basis of a chitta of deposit of money. The chitta was as follows :

* Regular Appeal, No. 36 of 1877, against the decree of Baboo Mothoornath Goopta Roy Bahadur, First Subordinate Judge of Zilla Bhagalpore, dated the 14th of November 1876.

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CHAMPABATY
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Chitta for rupees 6,100 given by Maha Chandji and another to Mussamut Anabuti and another, dated 1930 Sumbut.

Maha Chandji and
Baboo Golok Chand
Newluka, of Mathab-
gunge, agents of the
Maharaja.

Chitta given in writing to Anabuti and Joykali, on interest at 12 annas per cent., for Sumbut 1930.

The 4th Bysack : sum of Company's rupees 400 in cash, through Gobindram Moktear on account of Issur				
Dutt Jha	2,400 0 0
The 22nd Bysack or 8th Bysack Soodi : sum of Company's rupees three thousand and seven hundred in cash, through Gobindram Ram Rs. 300 (illegible)				
Mokhun Lall	3,700 0 0

On behalf of the defendant it was contended, *inter alia*, that this document not being stamped could not be received in evidence.

The Court of first instance finding on the facts that the defendant with whom the money was alleged to have been deposited was not a banker, and further that the money was deposited, as was apparent on the face of the chitta, through other persons than the plaintiff, held that the document could not come under the general exception section of the Stamp Act (XVIII of 1869). It further found that the document being in the nature of a memorandum admitting a debt should have been engrossed on a stamp paper of one anna; that the plaintiffs had not, as a matter of fact, offered to pay the stamp duty and penalty; that even if this had been done they could not have been received, there being no evidence to show that the document had been written upon plain paper without any intention to evade stamp duty; and that the compact between the parties having been reduced to writing, the plaintiff, on the authority of the following rulings, was precluded from proving his claim by oral evidence: *Monmohinee Dossee v. Bishenmoyee Dossee* (1)

(1) 7 W. R., 112.

and *Sheikh Rahomatulla v. Sariutulla Kaychi* (1). For these reasons the Court dismissed the suit.

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The plaintiff thereupon appealed to the High Court.

Baboo *Hemchunder Banerjee* for the appellant.

Baboo *Rashbehary Ghose* for the respondents.

The judgment of the Court was delivered by

JACKSON, J.—In this case the plaintiff sued upon an instrument called a chitta, which purported to acknowledge the receipt of money repayable with interest at 12 annas per cent. This instrument being tendered in evidence, the Court below held it could not be received, because it was unstamped. The Subordinate Judge was of opinion that it was an instrument of the kind on which stamp duty of one anna was payable, and that the said stamp not having been affixed at the time of the execution, it could not be affixed afterwards, and as the plaintiff was in his opinion debarred from proving by oral evidence a contract which had been reduced to writing, he dismissed the suit *in toto*.

In appeal it is contended that this instrument is not one of the kind which ought to be stamped with one anna duty, but of a kind coming under art. 11 of the second schedule of the General Stamp Act, so that the proper stamp duty was 8 annas, which might have been afterwards received on payment of the proper penalty. The simple answer to that contention is, that, assuming for the sake of argument that the instrument came properly under the 11th article of schedule ii, the amount of stamp duty and the penalty were not tendered. It has been held by this Court on former occasions (2), that where that has been so, the Appellate Court has no authority to direct the reception of the instrument on a subsequent tender of the amount. We have only to consider whether the instrument was properly refused. In our opinion it was properly refused. The appeal is, therefore, dismissed with costs.

Appeal dismissed.

(1) 1 B. L. R., F. B., 58, at p. 79; (2) See *Gourpershad Sing v. Lalla S. C.*, 10 W. R., F. B., 51, at p. 63. *Nundlal*, 7 W. R., 439.