

Section 7 applies to a totally different state of things, and in no way prevents the Munsif from making this order.

The judgment of the lower Appellate Court must, therefore, be set aside, and that of the Munsif restored. The case will stand decreed upon the hatchitta for the sum of 814 rupees and 12 annas. The special appellant will get his costs of this appeal and of the Courts below.

PRINSEP, J.—The error of the Subordinate Judge seems to have been caused by his taking the causes of action to have been irrevocably united by the execution of the hatchitta; as the suit was originally laid, the causes of action were distinct. When, however, the plaintiff sued on the hatchitta, they became united, and therefore, as the suit was originally laid, there was no relinquishment within the terms of s. 7 of the Code of Civil Procedure as has been held by the Subordinate Judge.

Appeal allowed.

Before Mr. Justice McDonell and Mr. Justice Broughton.

KHOOB LALL AND ANOTHER (DEFENDANTS) v. JUNGLE SINGH
(PLAINTIFF).*

1878
May 13.

Insufficiently stamped Document—Act XVIII of 1869, s. 20—Admission by Court—No Right of Appeal.

The question of the admissibility of an insufficiently stamped document once admitted as evidence by a Court can form no valid ground of appeal.

Enayetoolah v. Shaihh Meajan (1) followed.

THE plaintiff, the present respondent, brought a suit to recover Rs. 999-5-9 on a *teep* executed by the defendants on the 5th Kartick 1283 F. S. (17th October 1875).

The defendants objected to the *teep* being received in evidence as being insufficiently stamped, and further denied its execution. The lower Court held that the *teep* was not a promissory note, but a letter of agreement as defined by art. 11,

* Special Appeal, No. 1691 of 1877, against the decree of R. J. Richardson, Esq., Judge of Zilla Tirhoot, dated the 2nd of May 1877, affirming the decree of Baboo Dwarka Nath Bhattacharjee, Munsif of Mozufferpore, dated the 16th of September 1876.

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sched. ii of Act XVIII of 1869, and admitted the document in evidence on payment of the penalty prescribed by s. 20 of Act XVIII of 1869. The question as to execution of the document was decided against the defendants.

The defendants appealed, and the Judge upheld the decision of the lower Court. Thereupon the defendants appealed to the High Court.

Baboos *Mohesh Chunder Chowdhry* and *Chunder Madhub Ghose* for the respondent, on the case being called on, took the preliminary objection that the appeal would not lie, inasmuch as the document was received in evidence in the first Court, and having once been received its admissibility could not afterwards be questioned on appeal. They referred to *Enayetoolah v. Shaikh Meajan* (1), *Roy Luchmeepat Singh v. Shaikh Moshurruff Ali* (2), *Currie v. Chatty* (3), *Lalljee Singh v. Akran Ser* (4), and *Showdaminee Dossee v. Ram Roodro Gangooly* (5); and contended that whether the document was a promissory note or an agreement would make no difference in the case.

Mr. *C. Gregory* for the appellant.—The instrument in question is a promissory note as defined by cl. 25, s. 3 of Act XVIII of 1869, and being insufficiently stamped ought not to have been received in evidence, and being a promissory note, s. 20 of Act XVIII of 1869 was inapplicable.

MCDONELL, J. (BROUGHTON, J., concurring).—The plaintiff sued to recover 994 rupees 5 annas 9 pie principal, with interest, under a *teep* executed by the defendants. Both the lower Courts have decreed the plaintiff's claim. In special appeal it is urged that the Courts below should have held that the *teep* on which the plaintiff relies is a promissory note, and, being insufficiently stamped as such is inadmissible in evidence.

On the appeal being taken up a preliminary objection was raised that no appeal lies in this case, inasmuch as where a document is admitted by the first Court as not requiring a stamp, its inadmissibility cannot be questioned in appeal. Vari-

(1) 16 W. R., 6.

(2) 25 W. R., 80.

(3) 11 W. R., 520.

(4) 12 W. R., 47.

(5) 8 W. R., 367.

ous rulings of this Court have been cited in support of this objection: and it appears to us that the ruling in *Enayetoolah v. Shaikh Meajan* (1) is on all fours with the present case. Therefore, following that ruling, we hold that the preliminary objection must prevail.

The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Markby and Mr. Justice Prinsep.

GOPEE MOHUN MOZOOMDAR (PLAINTIFF) v. HILLS (DEFENDANT).*

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1878
March 21.

Res judicata — Suit for Rent.

The plaintiff sued the defendant in the year 1873 for arrears of rent at a certain rate per biga. The defendant pleaded that the land had been held by him at an uniform rent for more than twenty years, and this contention was supported by the Court. The plaintiff then gave the defendant notice of enhancement, and sued to recover rent for two years at the rate stated by the defendant, and for one year at an increased rate. To this suit the defendant raised substantially the same defence. *Held*, that the decision in the previous suit was not a bar to the present suit, there being two questions for consideration,—one, whether there had been an uniform payment of rent for twenty years, and, if so, whether the presumption, which the law directs to be drawn from an uniform payment of rent for twenty years, had been rebutted by the plaintiff; neither of which questions were concluded by the previous decision.

THE plaintiff in the year 1873 sued the defendant for arrears of rent due on a certain jote, alleging that it was an ootbundee tenure, and that the defendant was liable to pay rent at the rate of Re. 1 for every biga found by measurement annually. The defendant, among other things, pleaded that the jote was a kaimee tenure, and held by him at an uniform rent of Rs. 16 for more than twenty years, and this contention was supported by the Court. The plaintiff then gave the defendant notice of enhancement for increase of area found by measurement and holding below the prevailing rates, and now sued to recover rent for two years at the rate of Rs. 16, and for one year at an

* Special Appeal, No 1915 of 1877, against the decree of A. J. R. Bainbridge, Esq., Judge of Zilla Moorshedabad, dated the 5th of June 1877, affirming the decree of Baboo Bepro Dass Chatterjee, Munsif of Azgemunge, dated the 15th March 1877.