

APPELLATE CIVIL.

Before Mr. Justice L. S. Jackson and Mr. Justice Kennedy.

1878
 Jan'y. 11.

GOLAP CHAND MARWAREE (PLAINTIFF) v. THAKURANI
 MOHOKOOM KOOAREE AND ANOTHER (DEFENDANTS).*

Promissory Note—Unstamped Document—Admissibility of Evidence aliunde.

The plaintiff, in a suit on a promissory note written on unstamped paper, is not debarred from giving independent evidence of consideration.

Ankur Chunder Roy Chowdhry v. Madhub Chunder Ghose (1) distinguished.

THIS was a suit by the endorsee of a promissory note to recover upon the note the sum of Rs. 1878 and 7 annas. The note was unstamped, and was thereupon declared inadmissible as evidence. The Court at the same time refused to permit the plaintiff to prove consideration by other evidence. The lower Appellate Court upheld this decision, and the plaintiff preferred a special appeal to the High Court.

Baboo *Mohesh Chunder Chowdhry* for the appellant.

Baboo *Taruck Nath Sen* for the respondents.

The judgment of the Court was delivered by

KENNEDY, J.—The general principle seems well settled that the existence of an unstamped promissory note does not prevent the lender of money from recovering on the original consideration, if the pleadings are properly framed for that purpose: *Farr v. Price* (2). In this country, the great power given of raising the true issues between the parties prevents the question of pleading having much importance. Our only difficulty arose from the decision of Sir R. Couch in *Ankur Chunder Roy Chowdhry v. Madhub Chunder Ghose* (1).

* Special Appeal, No. 2839 of 1876, against the decree of J. M. Lewis, Esq., Judge of Zilla Bhagalpore, dated the 13th of September 1876, affirming the decree of Baboo Mothoora Nath Goopta, Subordinate Judge of that district, dated the 22nd of June 1876.

(1) 21 W. R., 1.

(2) 1 East, 55.

When that case, however, is examined, it does not support the proposition for which it was cited by the respondents' pleader. It is not very satisfactorily reported, there being no note of the argument or statement of the facts; but so far as we can gather, there had been no attempt in the lower Court to give independent evidence of the consideration, the contention for the plaintiff being that there was a sufficient admission of the note in the written statement; and I think it highly improbable that, considering the Judges who decided the case, they intended, without any allusion to *Farr v. Price*, to overrule Lord Kenyon's decision in that case, which precisely governs the present appeal, in which it appears that the plaintiff did seek to give evidence of the advance, the form of pleading being as I said not material.

1878

GOLAP CHAND
MARWARIE
v.
THAKURANI
MOHOKOOM
KOOAREE.

Appeal allowed.

PRIVY COUNCIL.

BANNOO AND OTHERS (DEFENDANTS) v. KASHEE RAM (PLAINTIFF).

P. C.*

1877

Dec. 6, 7.

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Hindu Law—Joint Family—Joint Estate—Presumption.

In the case of an ordinary Hindu family who are living together, or who have their entire property in common, the presumption is, that every thing in the possession of any one member of the family belongs to the common stock. The onus of establishing the contrary rests on him who alleges separate property.

But this presumption does not arise where it appears that there has been a division of the family property, and a separation in the family, all the members of which are living separately.

THIS was an appeal from a judgment of the Judicial Commissioner of Oudh, dated the 26th February 1875, confirming decisions pronounced by subordinate Courts in Oudh, in favor of the respondent, who was the plaintiff in the suit.

The only question arising on this appeal was as to whether the plaintiff had established his claim to succeed to certain

* *Present*:—SIR J. W. COLVILLE, SIR B. PEACOCK, SIR M. E. SMITH, and
SIR R. P. COLLIER.