
(1874) 05 CAL CK 0001

Calcutta High Court

Case No: None

Monmohinee Debi

APPELLANT

Vs

The Secretary of State

RESPONDENT

Date of Decision: May 18, 1874

Judgement

Sir Richard Couch, Kt., C.J.

The plaintiff in this suit is the endorsee and holder of a promissory note of the Government of India, dated the 31st of May 1859 and No. 013430 of 1859-60, for Rs. 18,400, and interest at 5■ per cent., and the suit was brought to obtain from the Government a renewal of the note, according, as the plaintiff alleged, to the undertaking in the notification and advertisement in the Calcutta Gazette of the loan for which this promissory note was given. The notification was in the Calcutta Gazette of the 20th April 1859, and stated that, upon receiving the money which was to be borrowed by the Government, promissory notes would be prepared, and issued to the parties entitled thereto, in a form which is given. In that form the note is payable to the person named, his, or her, or their executors or administrators, or his, or her, or their order, on demand at the General Treasury of Fort William after the, expiration of three months" notice of payment, to be given by the Governor-General of India in Council in the Calcutta Gazette, and the interest is payable half-yearly. The notification in a paragraph which comes after the form of the note states that the "promissory notes shall not be renewed, sub-divided, or consolidated, except by the Accountant-General of Fort William. The practice and rules heretofore in use in regard to the renewal, sub-division, and consolidation of promissory notes will be adhered to in respect of the promissory notes of this loan."

2. The evidence of what the practice and rules thus referred to were is contained in a book published in 1861 by Mr. Mackenzie, who was an officer in the department from which the notes were issued, and in which the business of the renewal would be transacted, and Mr. Mackenzie, who was called as a witness, proved that the rules and practice in the book were the rules and practice in 1859 when the note was issued. We consider that what appears in this book is what the Government undertook to be adhered

to in respect to the promissory notes of which this was one. The note is transferable by endorsement, and cannot be legally transferred without one. The rules provide for the renewal of the notes, and the 92nd rule Ante, p. 363 shows that it was contemplated that a renewal of a note of this description would become necessary. The 92nd rule, after speaking of there being a notice of trust in the endorsement as "Pay to A and B, trustees of the marriage settlement of C D and E F," says that the holder of the note "is called on to effect, if possible, the cancellation of the endorsement and substitution under the signature of the endorser of another, favoring the endorsees in their individual character without any allusion to the trust." It then contains these words:--"And when renewal at last becomes unavoidable, it is only permitted under a full indemnity to be entered into by sureties, as well as by the principal applying for the renewal." Thus it recognizes a case in which the renewal of a note would become necessary or unavoidable. But the more important rule to be considered in this case is the 103rd rule Ante, p. 363. By that it is provided that "all notes presented for the realization of interest due thereon, must be receipted on the reverse," giving the form of the receipt. And in the Circulars which are also published in Mr. Mackenzie's book, there is one Ante, p. 363, the 23rd para of which says:--"As the multiplication of entries thus required on the reverse of promissory notes will, if carelessly made, tend to necessitate the frequent renewal of promissory notes, and thereby to impose additional renewal fees on the proprietors, care should be taken to see that every entry is made to take up as small a space as possible."

3. In this case the note of which plaintiff is the holder had become covered with endorsements of the receipt of interest in accordance with this rule. The Government was authorized to make the endorsements, and the holder was not at liberty to object to it. The note having been so covered by endorsements, the officers of the Government annexed to it a paper on which further endorsements of the receipt of interest were made. They have called this an "allonge." But in truth it is not legally or properly so called. An "allonge" is a slip of paper annexed to a bill upon which, there being no legal limit to the number of endorsements, when there is not room to write them all distinctly on the back of the bill, the supernumerary endorsements may be written. It is annexed by the holder in order that he may write the endorsement. Here the paper was not annexed by the holder for making an endorsement of the note, but by the officers of Government for writing the receipts of interest. I do not find any rule which authorizes this: it seems to be the practice; but I have not found any rule which specially authorizes it. This paper, so annexed to the note, although not legally an "allonge," might, if the holder of the note had thought fit to adopt it as such, and to write an endorsement upon it, have become an "allonge." I do not say that, if the holder had written an endorsement upon the paper which has been annexed, it will not be a good endorsement and sufficient to transfer the note; but the holder is not obliged to do this. There is nothing in the rules which obliges him to adopt this mode of endorsing the note; and looking at those that I have referred to, which speak of the renewal of a note becoming unavoidable, and authorize what I may describe as the defacing of the back of the note by the officers of the Government, I think the fair construction of the rules is, that when the back of the note has become covered

with endorsements of the receipt of interest, so that there is not room to write an endorsement of the note distinctly on the back of it, the holder is entitled to have it renewed. He cannot arbitrarily go to the Government and say I desire to have this note renewed, but when by the acts of the Government, authorized by the rules, a note can no longer be transferred in the ordinary way, it is, I think a proper case for renewal, and the Government by the notification in the Gazette bound itself to renew.

4. The plaintiff is the legal holder of this note. If any person has a right to prevent her from parting with it, that person ought to take proper legal proceedings to obtain an order of Court restraining her from doing so. If such an order were obtained, and the Government had notice of it, it would be bound to act in accordance with it. The plaintiff could not insist upon having the note renewed, if by the renewal the order restraining her from parting with the note would be disobeyed. Here, in the absence of any decision or order of a Court that the plaintiff should not be allowed to negotiate this note, I think all that the Government can do, or has a right to do at present, is to see that the person who receives the interest upon the note is entitled to receive it. The note is not payable at present, and will not be for a long time. When it becomes payable, the Government will have a right to see that the person seeking payment is really entitled to it. All the liability the Government is under now is to pay the interest. No doubt, the refusal to renew was made in good faith, but it appears to me that the putting an obstacle in the way of the plaintiff by refusing the renewal, is not justified by the engagement which the Government entered into at the time when the loan was contracted, and the notification was published in the Calcutta Gazette. Therefore, the decree of Macpherson, J., will be reversed, and the plaintiff will have a decree for the renewal of the note; but as the word "widow" would be and is properly after the name of the plaintiff as endorsee of the note, the Government is at liberty to put the same word in the renewed note after the name of the plaintiff as the payee, so that she may not appear to be the payee in a different character from that in which she was an endorsee. We think the plaintiff ought to have the costs of this appeal, and the costs of the suit before Macpherson, J., to be taxed on scale No. 2.