
(1870) 01 CAL CK 0017

Calcutta High Court

Case No: None

Chandrakant
Mookerjee

APPELLANT

Vs

Kartikcharan Chaile
and Another

RESPONDENT

Date of Decision: Jan. 12, 1870

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears to me that the note in question ought to have been admitted in evidence, and should not have been excluded on the ground of not being sufficiently stamped. It appears to me that, in applying the Stamp Law, the stamp must be paid upon what is stated in the instrument, and cannot depend upon collateral evidence. If a man signs a promissory note payable on demand, it appears to me that the note ought to be stamped as a note payable on demand, although there may be a collateral agreement between the parties that the holder of the note will not present it for a given time; or, if paid on demand, that the maker of the note shall be entitled to a certain amount of discount to be deducted. In the present case, according to the evidence, notes payable on demand were given in respect of all the other goods which were sold. The note in question expressly declares that the defendants, on demand, promise to pay to Messrs. Watson, Green, and Hart, or order, the sum of Rs. 4,310-13-3, with interest, at the rate of 12 percent. per annum, from the 30th August 1868. In the margin of the note it is stated that something will be due on the 30th August, according to Chitty No. 3114, and contract of Sale No. 1087. It appears probable that the sum mentioned at the foot of the signature was intended to correct that mistake, and to point out that, according to the real transaction between the parties, what may be called the price of the goods was not to be due on the 30th August, i.e., was payable without any deduction for discount. There may be a partial or varying acceptance of a bill of exchange, but there is a great distinction between a bill of exchange and a promissory note. A bill of exchange is a request, by one man to another, to pay a certain amount, and the acceptor of the bill may, according to the custom of merchants, accept only for part of the amount which he is requested to pay, or

he may accept, payable at a different time from that at which he is requested to pay. And that seems consistent with reason, but when a man signs a promissory note, all that he promises to do is at his own discretion. He is not varying that which another man requests him to do. He cannot, therefore, with any reason, state in the body of the note that he will do one thing, and by a memorandum annexed to his signature declare that he intends to do another thing. In this case the defendants expressly promised to pay, on demand, a certain sum of money, but to their signature they annexed the following words: "The sum of four thousand three hundred and ten rupees, twelve annas, and six pie only" (which is a different sum from that stated in the body of the note), and "forty-five days from the 5th of August" (which is also a different date from that stated in the body of the note). They do not say that they intend that the note should be payable forty-five days after date for the sum of rupees 4,310-12-6; and they do not say:--"Although we stated one thing in the body of the note, we intend to state a different thing in the memorandum annexed to the signatures." The memorandum annexed to the signatures is, therefore, ambiguous, to say the least of it, and may refer merely to the memorandum in the margin which specifies the contract under which the note was given.

2. In the case of *Fanshawe v. Peet* 2 H. & N., 1, to which I referred in the course of the argument, Mr. Baron Martin said that, "at the trial, after consulting my brother Crompton, I thought that if a drawee intends to qualify his acceptance, he must do so in unambiguous language." The present case is still stronger, being the case of a promissory note. If the defendants by their signature intend to say that what they promise to do is to pay the amount annexed to their signature at the date mentioned in the memorandum, and that they are not bound by the terms in the body of the note, it follows that they ought to do so in the most unambiguous language. In this case I have shown that the memorandum at the end of the signature does not, in unambiguous language, state that the maker is not to be bound by what he has expressly declared in the body of the note which he has signed.

3. In the case of *Ferris v. Bond* 4 B. & A., 679, it was held that a note beginning in the body of it "I, A.B., promise to pay," and signed "A.B. or else C.D.," was a good note against A.B.; in other words, that the body of the note prevailed over the signature; consequently that it was not a note which in fact would be bad, that either A.B. or else C.D. was to be bound by it. It was held that the words "or else C.D." was only evidence against C.D. of a conditional agreement to pay, if A.B. did not.

4. In this case, I think, we may fairly and reasonably hold that the words annexed to the signature were not sufficiently clear to show that the signer of the note intended to do that by his signature which was expressly at variance with what he was stated to have promised in the body of the instrument.

5. I think that the Court is bound to put a reasonable construction upon documents in cases like this, and not to allow a man to use ambiguous language, for the purpose of getting rid of a contract upon the ground that it was not sufficiently stamped. It would

indeed be very hard upon parties, if a law, which was made simply for the purpose of the revenue, should be so applied as to allow men to make contracts, and then to violate them. It appears to me that the decree ought to be amended, by adding to the amount of the decree the amount due upon this note, with interest thereon, at 12 per cent. per annum, from the 1st October 1868. The appellant to have his costs on scale No. 2.

Macpherson, J.

6. I admit that if it had been clear, from the words added by the person who signed the note, that his intention was that the note was not to be payable on demand, there would have been no promissory note at all. But I think it is extremely doubtful what was the real object in adding those words. Mr. Kennedy has contended that the way to read the note is by treating it as a note payable "at forty-five days" sight, on demand," or "on demand, after forty-five days,"--a reading absolutely inconsistent with the terms of the note as it originally stood. But it appears to me more probable that the intention was merely to show that interest was not to begin to run until after the lapse of forty-five days, or that if the money was paid before the lapse of forty-five days, discount was to be allowed. We have the evidence of the person who signed the note, and it appears that he himself did not know the meaning of the words which he added. Madab Chandra Dutt says, "I was servant of K.C. Chaile and Kedarnath Dey. I signed the promissory notes. I was servant of the firm from its commencement. I was the Gomastah. I was Gomastah to K.C. Chaile and Kedarnath Dey. I was Gomastah of the business of K.C. Chaile and Kedarnath Dey. Gadadhar Dey used to work. The business of K.C. Chaile and Kedarnath Dey used to be carried on by Gadadhar Dey. Gadadhar carried it on. This is signed by me. I was in the habit of signing promissory notes. Gadadhar told me to do so. I signed the two names to this by authority of Gadadhar Dey." Then, in answer to Mr. Kennedy, he says, "I wrote 'forty-five days from 5th August.' I was told to do so. Gadadhar told me; I don't know the meaning of it. Gadadhar told me, and I wrote it. I know nothing about its meaning." On further examination by Mr. Kennedy, he says, I know the goods used to be purchased, and delivery taken. The terms were, money was to be paid forty-five days after the goods were brought; always forty-five days after delivery. The note was signed on the goods being delivered. After the goods were delivered, the notes were brought to me, and I signed them. Money has been paid within the term, and discount allowed; and money has been paid after the term. If money was paid within forty-five days, discount was allowed. That was what I was told to write, and I wrote it. I wrote according to my directions." So that, in the first place, he says he does not know what he meant; and in the second place he says that he meant that which is entirely opposed to what Mr. Kennedy contends that he may have meant. In my opinion there is nothing to lead me to suppose that he intended to alter the note from being a note payable "on demand" to a note which was not payable on demand. Therefore, I think the note is sufficiently stamped, and ought to have been admitted in evidence.