
(1878) 05 CAL CK 0017

Calcutta High Court

Case No: None

Champabaty

APPELLANT

Vs

Bibijibun and Another

RESPONDENT

Date of Decision: May 30, 1878

Citation: (1879) ILR (Cal) 213

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

Judgement

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.

2. 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 Article 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 (see *Gourpershad Sing v. Lalla Nundlal*) (7 W.R. 439) 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.