

(1878) 01 CAL CK 0020

Calcutta High Court

Case No: None

Gopal Chand
Marwaree

APPELLANT

Vs

Thakurani Mohakoom
Kooaree and Another

RESPONDENT

Date of Decision: Jan. 11, 1878

Citation: (1878) ILR (Cal) 314

Hon'ble Judges: L.S. Jackson, J; Kennedy, J

Bench: Division Bench

Judgement

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 1 East 55. 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 E. Couch in Ankur Chunder Roy Chowdhry v. Madhub Chunder Ghose 21 W.R. 1. 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.