

1899.  
March 14.

MUTTAIYA CHETTY v. HARMANIS APPU

C. R., Gampola, 3,710.

*Promissory note—Due cancellation of stamp—Stamp Ordinance, 1890, s. 8—Objection taken for first time in appeal—Objection too late—Tender of promissory note in evidence—Civil Procedure Code, s. 154.*

A promissory note not duly cancelled having been tendered in evidence, without objection taken, and judgment given for plaintiff, held, that it was too late in appeal to take that objection, and that the proper course was to have made that question an issue in the case.

Upon tender of the promissory note in evidence in the Court below, the procedure indicated in section 154 of the Civil Procedure Code should have been followed.

**A** CTION on a promissory note payable on demand for Rs. 230, which bore a stamp of five cents. The maker wrote his signature across the stamp, but did not put on it the date of the signing. The figures "4-7-96" appeared on the face of the stamp, being evidently those of the stamp vendor. The note was dated 4th August, 1896.

Plea, forgery.

After evidence heard, the Commissioner entered judgment for plaintiff,

Defendant appealed.

*Pieris*, for appellant.—The promissory note sued upon should not have been received in evidence, not being "duly stamped" in terms of section 8 of Ordinance No. 3 of 1890, which provides that "an instrument is not to be deemed duly stamped unless the stamp thereon be of not less than the proper amount of duty required by this Ordinance, and ..... unless the person required by this Ordinance to cancel the stamp affixed to the instrument cancels the same by writing ..... on or across the stamp his name or initials ..... together with the true date of his so writing." The true date does not appear on the stamp, and therefore section 7 precludes the note from being pleaded or given in evidence.

*Van Langenberg*.—The objection comes too late. It ought to have been made one of the issues in the case.

WITHERS, J.—

The only point pressed in the appeal is, that the promissory note, on which the plaintiff has recovered judgment, should not have been admitted in evidence by the Commissioner, on the ground that it does not purport to be duly cancelled in accordance with the 8th section of the Stamp Ordinance of 1890.

It seems to me that it is too late to take this point in appeal. It is a matter of which the defendant was perfectly cognizant when

the action was tried in the Court below, and when he was called upon to meet the plaintiff's case he should have asked the Commissioner to make that question an issue. I mean whether, assuming the signature to be his, the note was legally admissible in evidence, because the stamp does not purport to have been cancelled by the defendant. Had this question been raised at the proper time by the defendant, the Commissioner would have required the plaintiff to have sustained the admissibility of the note to be put in evidence by proof that the stamp, which is admittedly not dated by the maker of the note, was affixed to the note at the proper time.

I would point out to the Commissioner that section 154 of the Civil Procedure Code has not been strictly followed in this case. As soon as the promissory note was put into the hands of the plaintiff for identification, and he spoke to the contents of it, the note should have been formally tendered in evidence and marked by the Commissioner. As the explanation of the 154th section of the Code points out, the Commissioner would have two questions to determine before the document was admitted in evidence: one was, Was the signature authentic? the other was, Supposing it to be authentic, was it legally admissible in evidence? Had the Commissioner's attention been called to the second point, he would have seen that it lay on the plaintiff to prove that the stamp appearing on the promissory note was affixed thereon at the time the note was signed.

The appeal fails with costs.

1899.

*March 14.*

WITHERS J.

