

1916.

Present: De Sampayo J.

APPUHAMY *v.* THEODORIS *et al.*

115—C.R. Colombo, 46,721.

*Stamp—Cancellation by one of several parties executing an instrument—
Regulations as to sale of stamps—Stamps not dated or marked with
his initials by stamp vendor.*

Where an instrument requiring to be stamped is executed by several persons. it is not necessary that they should all cancel the stamp.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for plaintiff, appellant.

P. G. F. de Soyma, for first defendant, respondent.

Cur. adv. vult.

May 12, 1916. DE SAMPAYO J.—

This is an action on a promissory note for Rs. 150 dated February 10, 1912, and alleged to have been made in favour of the plaintiff by one Barbara Boteju and the fifth and sixth defendants. Barbara Boteju is now dead, and she is represented in the action by the first, second, third, and fourth defendants. The first defendant, who is her husband, alone filed answer. He denied that Barbara Boteju made the promissory note, and pleaded that what purports to be her mark was a forgery. He also charged the fifth and sixth defendants with fraudulent collusion with the plaintiff. The issue stated at the commencement of the trial was whether Barbara Boteju had signed the note, but after the plaintiff had given evidence, the Commissioner added the further issue: "Was the note duly stamped?" The Commissioner ultimately decided this latter issue against the plaintiff, and dismissed the action.

The ground of the decision is that in the opinion of the Commissioner the stamp which the note originally bore has been removed, and the stamp now appearing on it has been substituted. This opinion is not based on any express evidence, but on an examination

of the document by the Commissioner himself. The stamp on the note is of the description in vogue before the postage stamps replaced the old judicial and revenue stamps, and the Commissioner says that, looking through the paper with its back to the light, he finds indications that there was a smaller stamp on the paper before. My own observation does not enable me definitely to confirm this view. Moreover, no questions appear to have been put to the plaintiff and his witnesses on the point, nor was any evidence given with regard to it on behalf of the defendant. In his judgment the Commissioner says that the defendant's proctor complained that the stamp now on the note was not the stamp that was on it when he first saw it. The proctor's statement appears to have influenced the Commissioner to some extent. If the statement was to be utilized at all, the proctor should have been called as a witness. The matter appears to me to require further investigation.

But before making an order on the appeal, I think it is right to deal with one or two points in the judgment with reference to the stamp. The Commissioner says that the stamp should have borne the stamp vendor's initials and date of issue, and that it should have been cancelled by all the three makers, and not by Barbara Boteju alone. As regards the first point, the Commissioner is mistaken as to the requirements of the law as it existed at the date of the note. Section 74 and the following sections of the Stamp Ordinance, No. 22 of 1909, provided for stamps being sold by licensed vendors, and section 77 required such a vendor to mark the stamps at the bottom thereof with his name or initials and with the date of sale. But section 83 (1) and (2) enables the Governor in Council to discontinue the issue of licenses, and to make rules entrusting the sale of stamps to public officers, and regulating the manner and conditions in and subject to which such sale shall be carried on. By notification dated March 28, 1911, the Governor in Council, in exercise of the above power, directed that the issue of licenses to sell stamps should be discontinued after December 31, 1911, and by notification dated December 12, 1911, certain officers were appointed *ex officio* vendors of stamps, in addition to the shroffs of local Treasuries and post-masters. Notification dated March 28, 1911, contained the rules regulating the manner and conditions of sale of stamps by public officers, and rule No. 7 required such officers to mark the stamp with their initials and date of sale, just as section 77 of the Ordinance required the former licensed vendors to do. But these rules were superseded by those of August 15, 1911, and by the latter rules the above duty is not required of *ex officio* vendors of stamps. Since the date of the promissory note in suit is subsequent to the date on which the new rules came into operation, the Court will reasonably presume, in the absence of any specific evidence to the contrary, that the stamp on the promissory note was sold by an *ex officio*

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vendor of stamps, and at a time when the marking of them with the date of sale and the initials of the vendor was no longer required.

The Commissioner's opinion that when an instrument is executed by several persons they must all cancel the stamp is, I think, also erroneous. The following are the relevant provisions of the Ordinance:—

9. (1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, after affixing such stamp, cancel the same so that it cannot be used again.

(b) Whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in the manner aforesaid, cancel the same so that it cannot be used again.

The paragraph (a) of sub-section (1) does not make it very clear that the person there contemplated includes the first executant of the instrument. But in the case of an instrument which is required to bear a stamp at its execution, the person who is supposed to affix the adhesive stamp is presumably the person who first executes it. The paragraph (b) is, however, sufficiently plain. It requires a subsequent executant to cancel the stamp, "unless such stamp has been already cancelled," and in that event he need not cancel it any further. In the present case, the first maker of the note was Barbara Boteju, if she, indeed, did sign the note at all, and her cross and name, if, again, they are hers, appear across the stamp, together with the date, in such a manner that it cannot be used again. That being so, the fifth and sixth defendants, so far as the requirements of the Ordinance are concerned, need not on the above hypothesis have cancelled the stamp again. It should be borne in mind in this connection that the whole object of the provisions as to cancellation is to see that stamps once used should not, through imperfect cancellation, be allowed to be availed of again, and when that object is attained by effective cancellation by one party, any further cancellation by subsequent parties will be purposeless, and cannot be supposed to have been intended by the Ordinance.

Apart from the law bearing on the question of stamps, the circumstances of the case on the merits are undoubtedly suspicious. But those matters have not been decided by the Commissioner, and I think the case should go back for the determination of all the questions of fact involved in the case, including the question whether the cross and date on the stamp were in fact put by Barbara Boteju or by her authority, and whether the stamp has been cancelled within the meaning and intention of the Ordinance, as above construed.

The judgment appealed from is set aside, and the case sent back for further proceedings.

All costs will be costs in the cause.

Set aside and sent back.