

PUTHAN KANGANY v. PERUMAL.

1901.  
June 11

C. R., Hatton, 3,099.

*Promissory note—Stamped with postage stamp.*

*Per LAWRIE, A.C.J.*—A document running as follows: "We, the undersigned, promise to pay Puthan Kangany a sum of Rs. 137, being debt on two coolies, Kadirai and Nagamma," is a promissory note.

But as it bore a postage stamp of 5 cents instead of a revenue stamp, it was held that plaintiff could not be sued upon it.

PLAINTIFF alleged in his plaint that on the 8th November, 1899, the defendants undertook or promised to pay to the plaintiff the sum of Rs. 137, being the amount of the debt due to the plaintiff from Kadirai and Nagamma, and that the defendant did not pay the same. Plaintiff filed with his plaint a document which ran as follows:—

November 8th 1899.

"We, the undersigned, promise to pay Puthan Kangany the sum of Rs. 137 being debt due on two coolies, Kadirai and Nagamma.

"M. H. A. PETERKIN.

"W. S. HAMILTON."

A 5-cent postage stamp was affixed and cancelled 8-11-99.

The defendants in their answer pleaded that plaintiff's action was not maintainable, as the document they relied upon was bad in law and of no avail. They denied their liability to pay plaintiff the amount claimed.

On the trial day the only issue tried which was material to this appeal, was whether the document in question was valid.

The Commissioner was of opinion that the document was not a guarantee, but that it was intended only as evidence of a debt, and as such sufficiently stamped under the notification in the *Government Gazette* No. 5,417 of 10th July, 1896, page 365. The Commissioner heard the parties on the merits, and entered judgment for plaintiff against the first defendant only.

First defendant appealed.

*E. Jayawardana*, for appellant.—The plaintiff cannot sue on the document he has brought into Court. If it is a promissory note, it is wrongly stamped. If it is an undertaking to pay under the Ordinance No. 7 of 1840 then, too, it is inadmissible under the Stamp Ordinance. Therefore, it is inadmissible any way. Postage stamps are not usable on promissory notes.

Only revenue stamps can be used. [LAWRIE, A.C.J.—A postage stamp is also a revenue stamp. What was the law in 1899, in which year this note was made?] The notification of 10th July, 1895, gives a list of documents which may bear a postage stamp, in which promissory notes are omitted. So the postage stamp does not help a promissory note. Ordinance No. 3 of 1890 requires a 5-cent stamp. This notification excludes the use of the postage stamp. The conclusion is that a revenue stamp must be used. As a promissory note, then, this document is inadmissible. Plaintiff says this is a simple undertaking. An undertaking must be evidenced by a document properly stamped, and for an undertaking in respect of an amount exceeding Rs. 100, the stamp must be of the value of 50 cents (see Ordinance No. 3 of 1890, Schedule B, under the head of Agreements). [LAWRIE, A.C.J.—Is this a contract, or a promissory note, or an acknowledgment of a debt?] It is not an acknowledgment, because I cannot acknowledge another's debt to a third party. Under the section an acknowledgment must be one's own acknowledgment. [LAWRIE, A.C.J.—It may be an acknowledgment on behalf of another, and then would not a postage stamp do?] An agent may acknowledge. The evidence shows that what the parties intended was a promissory note. The document itself shows that it is in form a promissory note, and even if the evidence was the other way, oral evidence could not contradict the document.

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*Cur. adv. vult.*

11th June, 1901. LAWRIE, A.C.J.—

The document relied on by the plaintiff is a promissory note. It is not properly stamped. Bearing only a postage stamp it cannot be received in evidence. The action must be dismissed with costs.

