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Present : Lascelles C.J. and Middleton J.

KISTNAPPA CHETTY v. SILVA *et al.*

241—D. C. Colombo, 31,377.

Cancellation of stamp—Promissory note—Antedating stamp—Ordinance No. 22 of 1909, s. 9.

A promissory note was made on January 4, 1909, and the stamp was affixed and was cancelled on that date by the maker, but in cancelling the note he put the date of January 1, 1910, instead of January 4, 1910.

Held, that the stamp was sufficiently cancelled.

LASCELLES C.J.—The language of section 9 of the Stamp Ordinance of 1909 leaves no doubt that sub-section (3) is optional and not imperative.

THE facts appear from the judgment.

Walter Pereira, K.C. (with him *Sandrasagra*), for the appellants.—The method of cancelling a stamp is indicated by section 9, sub-section (3), of Ordinance No. 22 of 1909. The person cancelling

¹ (1892) 2 C. L. R. 59 ; 1 S. C. R. 147.

has to write "the true date of his so writing." The word "may" in sub-section (3) cannot be interpreted to mean that the provisions of that sub-section need not be complied with in every case. The object of the section is to protect the revenue ; if any date could be written on the stamp, the revenue would not be protected. It would be highly dangerous to hold that a maker of a note could antedate the cancellation of a note.

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Sampayo, K.C., for the plaintiff, respondent.—Sub-section (3) gives only one of the modes of cancellation of a stamp by way of an illustration ; it does not say that it is the only mode of cancellation. The object of cancelling a stamp is to prevent its being used again. Whether a person puts the actual date of cancellation or any other date the object is attained. Postdating may not be a sufficient mode of cancellation, for the stamp may be used again ; but antedating prevents the stamp from being used again. The corresponding section of the Indian law is section 12 of the Indian Stamp Act of 1899. Sub-section (3) of the Indian Act has the additional words "or in any other effectual manner." But it was held in India in *Virbhadarapa v. Bhimaji*¹ that these words did not effect any change in the law of India ; and that the words were added in the new Stamp Act of India to make the law clearer. The method of cancellation indicated in sub-section (3) is not obligatory ; it is only intended as a guide. *Virbhadarapa v. Bhimaji*.¹

Counsel cited *Pitche Cannen Asary v. Asary* ;² *Moorgappa Chetty v. Silva* ;³ *Bhawanji Harbhun v. Doji* ;⁴ *Alpe's Law of Stamp Duties*, p. 22 ; *Donogh's Indian Stamp Law*, pp. 12 and 117.

Walter Pereira, K.C., in reply.

Cur. adv. vult.

August 23, 1911. LASCELLES C.J.—

This is an action on a promissory note, to which the defendants, who are the executors of the maker, pleaded that the note was a forgery ; and also that it was inadmissible in evidence, on the ground that it had not been duly stamped within the meaning of section 9 of the Stamp Ordinance of 1909. The only ground of appeal now taken is that which relates to the stamping of the promissory note. It appears that the note was made on January 3 or 4, and that the stamp was affixed and was cancelled on that date by the maker, but that in cancelling the note he put the date January 1 instead of the 3rd or the 4th of that month. The explanation given is that the note in question was a renewal of a note which had expired on January 1, and that the maker affixed that date on the note with some idea of preserving the continuity of the transaction. However that may be, the question arises whether the note has been duly cancelled in the manner provided by section 9. Now, in order to

¹ 28 Bom. 432.

² (1882) *Wendt's Rep.* 41.

³ *Wendt's Rep.* 351.

⁴ (1894) 19 Bom. 635 at page 638.

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ascertain the meaning of the section, it is necessary to regard it as a whole. The section is divided into three sub-sections : the first sub-section deals with the cases (a) and (b), namely, the case where a person affixes a stamp to an instrument which has already been executed, and the case of a person who executes an instrument. In both these cases it is required that the stamp shall be cancelled so that it cannot be used again. No particular method of cancelling the stamp is prescribed ; the only essential is that it shall be so cancelled that the stamp cannot be used again.

Sub-section (2) deals with the case of an instrument that has not been cancelled so that it cannot be used again. Such an instrument, so far as the stamp is concerned, is deemed to me to be unstamped, and therefore is inadmissible in evidence.

Then we come to sub-section (3), which states that the person required to cancel a stamp may cancel it in a certain way. He may write his name in ink on or across the stamp, or the name or initials of his firm, with the true date of his so writing so as effectually to obliterate and cancel the stamp, or so as not to admit of the stamp being used again.

The language of the section leaves no doubt that sub-section (3) is optional and not imperative. The object of the sub-section is to indicate a method of cancelling the stamps, which will be accepted as sufficient. It is a method which all prudent persons would adopt, but there is nothing in the section which makes it obligatory on persons to cancel the stamps on an instrument in that particular way. What the section does insist on is that the stamps shall be so cancelled as not to be capable of being used again. In the present case it is obvious that the stamps on the promissory note have not been cancelled in the way indicated by sub-section (3), inasmuch as the maker did not insert on the stamp the true date of the cancellation. But the question remains as to whether there has been compliance with the earlier portions of the section, which require stamps to be so cancelled as not to be capable of being used again. Now, the only argument addressed to us on that point by the learned Solicitor-General is that it would be highly dangerous to admit that a stamp on which the cancellation was antedated could be held to be properly cancelled, and we were invited, as I understand, to rule that an antedated stamp can in no case be held to have been properly cancelled. Now, I should hesitate in laying down a general rule of this nature unless some authorities had been cited in support of the proposition ; and considering that the Indian Stamp Ordinance is practically the same as our present Ordinance, I should have expected some Indian authority if the proposition had been sound law. But I think it would be going too far to attempt to lay down any general rule on this subject. There is a vast difference between a stamp antedated by only two or three days as in the present case, and a stamp antedated by a longer period. In the one case the grounds of suspicion,

if they exist at all, are extremely small ; in the other case they may be very substantial. In dealing with the particular case before us, I see no reason for holding that the stamp has not been properly cancelled. The only defect alleged is the fact that the cancellation has been antedated by either two or three days. In the absence of any further grounds of suspicion, I am not prepared to hold that the stamp has been improperly or insufficiently cancelled. It seems to me that it has been so cancelled as to prevent its being used again. I think the judgment of the District Judge is correct, and I would confirm it with costs.

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I agree. The question here is whether the document before us bore a stamp which was duly cancelled. The stamp on it was cancelled in fact, inasmuch as it bore upon it the name of the person responsible on the promissory note and a date, though that date is some two days before the document was executed. Under section 9, sub-section (3), it seems to me that the mode of cancellation there laid down is an optional one, and that the object of the section is that the stamp should be obliterated and cancelled so as not to admit of its being used again. Here, although the date of cancellation was *ex facie* previous to the actual date of the instrument, in my opinion it was cancelled, and it was sufficient within the terms of the section. As regards the danger alluded to by the learned Solicitor-General, it does not appear to me more imminent than would be a user of old dated stamps on documents falsely dated to appear old. In reality such things have been known to occur in this Court, and it is possible that fraud may occur in regard to such a cancellation as is objected to here. Any discrepancy between the date of the cancellation of the stamp and the date of the document should, I think, always put the Court on an inquiry. The question whether a document has been duly stamped, as regards the cancellation of the stamp, is a question of fact dependent on proof or admission of circumstances attendant upon it. The Court, if put on an inquiry, would be able to ascertain whether or not fraud had been introduced. I think the appeal should be dismissed with costs.

Appeal dismissed.