
(1887) 01 AHC CK 0017
In the Allahabad High Court

Balbhadar Prasad

APPELLANT

Vs

The Maharajah of Betia

RESPONDENT

Date of Decision : 17-01-1887

Acts Referred:

Citation : (1887) ILR (All) 351

Hon'ble Judges : Straight, J;Oldfield, J;John Edge, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

John Edge, Kt., C.J.—This was an action by which the plaintiff sought to recover from the representative of the Maharajah of Betia a sum of Rs. 1, 253-6. The action arose in this way. It appears that the deceased Maharajah, when on a visit to Allahabad for the purpose of religious observances, was accompanied by a servant or retainer against whom the plaintiff had obtained a money-decree. After the arrival of the Maharajah in Allahabad, the present plaintiff, the decree-holder, arrested the retainer of the Maharajah. On that the Maharajah requested the plaintiff to discharge his servant from arrest, offering to pay the amount of the debt. The plaintiff consented to release the retainer upon the Maharajah becoming liable for the amount of the debt, and insisted on having the Maharajah's promissory note at six months for the debt and interest. On this the Maharajah executed the promissory note, which is found to be not stamped. Under these circumstances the two Courts below held that this action was not maintainable, taking the view that the action could not be maintained without the note being put in evidence, and the plaintiff was prohibited by the Stamp Act from putting it in evidence on account of the want of stamp.

2. In my opinion this action can be maintained apart from the note altogether. It is said by Mr. Gonlan that the note is the sole evidence of the contract; that the contract which was entered into between the Maharajah and the plaintiff was reduced into writing in all its essentials and embodied in that note. Now it is admitted what the contract was. We also have the promissory note before us,

and, if it were necessary, we find that the note does not express what the real contract was.

3. The contract was that the Maharajah undertook to pay this debt on condition of the plaintiff releasing his debtor. That is a contract not embodied in the note. The note, in my opinion, is merely a collateral security for the fulfilment by the Maharajah of the promise to pay this debt, and does not form in any sense the contract between the parties. I am of opinion, consequently, that the note cannot be considered as the contract between the parties. Of course the promissory note is a contract, but it cannot be considered as the contract out of which the defendant's liability arose.

4. Under these circumstances it appears to me that in this case it is open to the plaintiff to show what the verbal contract was,--i.e., to prove what was the consideration for the note, in the same way as if he had lent money or delivered goods to the Maharajah. In the latter case it has been held here that the lender of the money and the vendor of the goods could maintain his action on the consideration for the note. Under these circumstances this appeal must be allowed, and the case must go down to the first Court to be tried on the merits. The appeal is decreed with all the costs.

Straight, J.

5. I think the plaintiff was entitled to resort to the consideration, and to maintain the suit against the defendant for money lent. I fully agree with the learned Chief Justice in the proposed order of remand.

Oldfield, J.

6. I think that the document of the 11 Magh 1289 fasli is a promissory note, and, as such, required to be stamped to be admissible in evidence. But I agree with the learned Chief Justice in holding that the claim of the plaintiff may be proved by other evidence. I think the question is one of the admissibility of evidence, and ought to be governed by Section 91 of the Indian Evidence Act, which says: "When the terms of a contract or of a grant or of any other disposition of property have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases, in which secondary evidence is admissible, under the provisions hereinbefore contained." I think that refers to cases where the contract has by the intention of the parties been reduced to writing. The following extract from Best's Principles of Evidence, second edition, p. 282, puts very well what is meant: "Where the contents of any document are in question, either as a fact in issue or a subaltern principal fact, the document is the proper evidence of its own contents, and all derivative proof is rejected until its absence is accounted for. But where a written instrument or document of any description is not the fact in issue, and is merely used as

evidence to prove some fact, independent proof aliunde is receivable. Thus, although a receipt has been given for the payment of money, proof of the fact of payment may be made by any person who witnessed it....So, although where the contents of a marriage register are in issue, verbal evidence of those contents is not receivable, yet the fact of the marriage may be proved by the independent evidence of a person who was present at it." If, therefore, in this case this document was intended to embody the contract of the parties, I should hold that the evidence of its contents would not be admissible. But in my opinion there is nothing whatever to show this. The claim has been brought upon the promise by the plaintiff, and he states in his plaint that in execution of his decree he arrested the retainer of the Maharajah, upon which "the master of the judgment-debtor, having taken upon himself the responsibility of the decree-money, had the said Dumbar released from arrest, and made a promise to the plaintiff to pay the said sum of Rs. 986-15, with interest at 12 annas per mensem, within a period of six months; that by virtue of the said promise of the Maharajah the plaintiff had his decree against Dumbar Pandey struck off as wholly satisfied." The promissory note is merely used, and was taken, as has been observed by the learned Chief Justice, as collateral security for the debt. Under these circumstances I see no reason whatever why the claim cannot be proved aliunde by other evidence. I might also refer, as entirely in point, to an unreported case decided by this Court on the 15th March 1882, from a reference from the Judge of the Small Cause Court at Benares. Gopi Nath v. Hurrish Chundar, Misc. No. 35 of 1882, Oldfield and Brodhurst, JJ. I therefore concur in the order proposed. See Pothi Beddi v. Veiyudasivan I. L. R 10 Mad 94Rep.