

(1918) 01 BOM CK 0035
In the Bombay High Court

Dhondiram Chatrabhuj Marwadi

APPELLANT

Vs

Sadasuk Savatram Marwadi

RESPONDENT

Date of Decision : 28-01-1918

Acts Referred:

Stamp Act, 1899 — Section 35

Citation : 46 Ind. Cas. 174

Hon'ble Judges : Stanley Batchelor, Acting C.J.; Shah, J

Bench : Division Bench

Judgement

Stanley Batchlor, Acing, C.J.—The plaintiff, who is a Marwadi, resident in the territories of His Exalted Highness the Nizam, sued the defendant, a Marwadi, resident in British India, on a promissory note dated the 21st of August 1913. The suit was brought in the Court of the Subordinate Judge at Malegaon in the Nasik District. The promissory note is stamped with the stamp which would have been required in British India. The note was executed in Hyderabad State and does not bear the stamp which is required by the laws of that State. On this ground the defendant has claimed that the suit will not lie in the British Indian Court, and he has succeeded in this contention in the lower Court of Appeal. It appears to me that the learned Judge below was wrong in the view which he took upon this point, and that the question is settled for us by the decision in *Bristow v. Sequeville* (1850) 5 Ex. 275 : 3 Car. & K. 64 : 19 L.J. Ex. 299 : 14. Jur. 674 : 82 R.R. 664 : 155 E.R. 118. There Rolfe, B., in delivering the judgment of the Court, said: "I agree that if for want of a stamp a contract made in a foreign country is void, it cannot be enforced here." He continued, referring to *Alves v. Hodgson* (1797) 7 T.R. 241 : 101 E.R. 953 : 4 R.R. 433: "if that case meant to decide, that where a stamp is required by the revenue laws of a foreign State before a document can be received in evidence there, it is inadmissible in this country, I entirely disagree." The words that Lord Kenyon in *Alves v. Hodgson* (1797) 7 T.R. 241: 101 E.R. 953 : 4 R.R. 433 is reported to have used are these: "It is said that we cannot take notice of the revenue laws of a foreign country: but I think we must resort to the laws of the country in which the note was

made: and unless it be good there, it is not obligatory in a Court of Law here." These words must now be understood subject to the interpretation placed upon them in the Court of Exchequer. The argument in Bristow's case (1850) 5 Ex. 275 : 3 Car. & K. 64 : 19 L.J. Ex. 299 : 14. Jur. 674 : 82 R.R. 664 : 155 E.R. 118 further explains the view which the Court took. In the course of that argument Pollock, C.B., referred to James v. Catherwood (1823) 3 D. & R. 190 and continued: "There the defendant's Counsel objected that certain receipts for money lent in France were inadmissible, and offered to show that, by the law of France, such receipts required a stamp; but Abbott, C.J., admitted them; and, on motion for a new trial, said, "This point is too plain for argument. It has been settled, or at least considered as settled, ever since the time of Lord Hardwicke, that, in a British Court, we cannot take notice of the revenue laws of a foreign State, It would be productive of prodigious inconvenience, if, in every case in which an instrument was executed in a foreign country, we were to receive in evidence what the law of that country was, in order to ascertain whether the instrument was or was not valid." "

2. Clearly, therefore, as I understand this authority, the decision is to this effect that, if the law of the foreign country in which the document was executed provides no more than that the agreement shall not be received in evidence, because it is not stamped, then the agreement may be sued upon and enforced in a Court in British India; but if the law of the foreign country provides that, by reason of the want of stamp, the agreement itself which is contained in the unstamped document shall be void, then the plaintiff cannot succeed in a Court of British India. That would be manifestly so, because ex hypothesi there would be no contract on which he could succeed. Now in the particular case before us, the only evidence which we have as to the provisions of the law of the Hyderabad State in regard to such a document as this, is contained in Section 35 of the Stamp Act of that State, which is a mere translation into Urdu of the provisions of Section 35 of our own Stamp Act of 1899, It appears to me that if the Legislature had had the judgment of the Court of Exchequer precisely in view, they could hardly have followed more closely the line of distinction which that Court adopted, for in Section 35 of the Stamp Act, what is provided is, that No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped," that is to say, the Legislature of Hyderabad has provided that the unstamped instrument shall not in any circumstances be receivable as evidence. But the law does not declare that the agreement is void because it happens to be contained in an unstamped instrument.

3. On these grounds, I am of opinion that the appeal must be allowed, and since no other defence to the claim was made in the lower Court of Appeal, I think the decree must be reversed, and the plaintiff's claim must be decreed with costs throughout.

Shah, J.

4. I am of the same opinion.