

(1924) 08 BOM CK 0004
In the Bombay High Court
Case No : O.C.J. Suit No. 2776 of 1923

International Banking Corporation

APPELLANT

Vs

H. Pestonji and Co.

RESPONDENT

Date of Decision : 22-08-1924

Acts Referred:

Stamp Act, 1899 — Section 14

Citation : AIR 1925 Bom 187 : (1925) 27 BOMLR 31

Hon'ble Judges : Kajiji, J

Bench : Single Bench

Judgement

Kajiji, J.—The plaintiffs as holders for value of nineteen bills of exchange mentioned in the plaint have filed this suit to recover from the defendants the amounts due on them.

2. It appears that these bills were drawn by Messrs, Royle & Binns of Manchester on the defendants and were payable to the order of the drawers. All these bills were re-accepted after time of payment was extended and. it is urged on behalf of the defendants that these bills are not admissible in evidence, having regard to the provision of Section 14 of the Indian Stamp Act.

3. It appears that these bills were originally drawn in August 1920 payable at ninety days' sight. They were accepted by the defendants and, after they were accepted, the defendants felt that they would not be able to meet these drafts on due dates, so they requested the plaintiff's to write to their home friends to get the time extended and they stated that Messrs. Royle & Binns were not unwilling to do so. Time was extended by four months from due dates of the bills of exchange and due intimation was given to the defendants of the same. Then these bills were re-presented to the defendants for acceptance and the defendants re-accepted them.

4. It is now urged that these amount to second instruments and as such, u/s 14 of the Indian Stamp Act, a fresh stamp is necessary, and, as there is no fresh

stamp on these bills of exchange, these bills are inadmissible under a 35 of the Indian Stamp Act. There is no doubt that, if the due date had not been extended, it would have been a perfectly good bill, or if the original intention of the parties was that those bills should not be payable after ninety days" sight but ninety days plus four months and the words " ninety days after sight" were inserted in the bills by mistake, then in such a case the bills could be altered because there was a mistake, and, if it is so altered, it does not require a fresh stamp. But it is no body"s case here that it was intended from the very beginning that the time of payment should be seven months after sight. Therefore the alteration from ninety days to four months after the due date is not altered because it was a mistake but it is altered in consequence of a new arrangement arrived at between three parties, viz., the drawers, the bank and the acceptor. But it is urged that on the face of it there is no alteration, that is to say, that the words "ninety days after sight" are not struck out and there is no alteration on the face of it, and the due date in red ink which is put on the top of the bill on the right-hand side is made by the bank in Bombay simply for their own convenience, and it is a mere memorandum, and therefore that does not amount to an alteration on the face of it. I see no force in this argument. In my opinion it amounts to an alteration. It is every body"s case that ninety days were extended to four months after the first due date. Whether the red ink memorandum on the top of the bill of the second due date was there or not it makes no difference. I believe the evidence of Mr. Bremmer that it was not there when the bills were presented for re-acceptance. Every body knew that the date of payment of these bills of exchange was extended by four months from the first due date. It must be held, under these circumstances, that the original bill was extinguished and a new bill was substituted in its place which was re-accepted and the due date of it was four months after the first due date The cases of Cordwell v. Martin (1807) 1 Camp. 79 and Owthwaite v. Luntley (1815) 4 Camp. 179 are authorities to show that if the bill is altered or it is so altered with the consent of the parties, and such altered bill of exchange does not bear a fresh stamp, then such bill would not be admissible in evidence and the plaintiff would be non-suited on such bill.

5. Mr. Campbell for the plaintiffs has urged that there is no such alteration on these bills because "ninety days after sight" is not struck out and "four months after September 2" is not substituted in its place. Every body knew when the re-accepted bills were payable. Whether actual due date was put or not it is not important, for the parties knew that new bills were substituted for old ones and that is a second instrument within the meaning of Section 14 of the Indian Stamp Act and it makes a new bill on an old document. Mr. Campbell has also urged that it was intended that if the second bill is not met, the first bill would still be in existence and the first bill would be extinguished only if the second bill is fulfilled. There is absolutely no evidence to show that that was the intention of the parties. The evidence of the Assistant Manager of the plaintiff bank seems to me to be quite clear that the parties agreed that the extension of time should be allowed by four-months and that the old bill was not to be enforced. The case of

Reed v. Deere (1827) 7 B. & C. 261 is an authority in point that if a second bill is taken and even if that second bill is ineffectual for some reason or other, you cannot file a suit on the first bill. Therefore these bills which are marked XI are inadmissible in evidence. The suit must, therefore, be dismissed with costs.