Original Suit No. 583 *of* 1865 ; *Appeal No.* 69.

THE ROYAL BANK OF INDIA ...*Plaintiff and Appellant.*
HORMASJI KHARSEDJI .....*Defendant and Respondent.*

Stamp—Rejection of document—Appeal.

Held that an appeal lies to the High Court from the decision of a Judge in a Division Court rejecting a document, tendered in evidence under Sec. XVII., cl. 1, of Act X. of 1862, on the ground that there had been an intention to evade the payment of stamp duty.

The point upon which the decision of the Court is to be final, under Sec. XVII. of the Stamp Act, is as to what is the proper amount of stamp duty which the document ought to bear, and not as to whether the Court ought, or ought not, to receive the document in evidence.

A Court to which a document is tendered in evidence under Sec. XVII. ought not to reject it, unless it clearly appears that there was an intention to evade the payment of stamp duty.

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THIS was an appeal from the decision of Sir JOSEPH ARNOULD, who gave judgment for the respondent—one of two defendants in the original suit—on the 29th of June 1866.

The suit was brought on a joint and several promissory note for Rs. 1,00,000; and the first defendant admitted his liability. On the note being tendered in evidence, it was objected to, on behalf of the second defendant (now respondent), as it bore only an adhesive stamp, which it was contended was, moreover, of inadequate value,—the note, though purporting to be payable on demand, being really intended by the parties to it to be payable three months after date.

The Judge, after inquiry, refused to allow the document to be received in evidence upon payment of the penalty; and the case having been gone into as for money lent, judgment was given for the plaintiff as against the first defendant, but in favour of the second defendant with costs.

Howard and *Macpherson* for the appellant:—There was nothing on the face of the note to show that payment could not be demanded within three months; nor any evidence of a contemporaneous agreement which would control the operation of the instrument. There was, no doubt, an understanding between the parties that in all pro-

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bability payment would not be demanded till after the expiration of three months : but that understanding did not amount to an agreement; and the plaintiffs reserved to themselves the right to demand payment at any time. The exercise of that right was entirely within their discretion.

Scoble and *McCulloch* for the respondent :—The Judge of the Division Court found that there had been an intention to evade the payment of stamp duty, and that he was bound, on the evidence, to hold that the note sued upon was really a note payable three months after date. His decision on that point was final, under Sec. XVII. of the Stamp Act, No. X. of 1862; and an appeal did not lie. There was an express decision to that effect by the High Court at Madras: *Lakshmináráyan Aiyar* v. *Suppara Gaudan* (*a*).

COUCH, C.J. :—The first question to be considered in this case is, whether there is a right of appeal to this court from the decision of the learned Judge upon the following point, namely, that as he thought a case was made out which should induce him not to exercise the power which he had, under Sec. XVII. of the Stamp Act, of receiving a document in evidence, and dealing with the matter in the same way that the Collector would have dealt with it, and of considering whether there had been an intention to evade payment of the stamp duty, he rightly came to that conclusion, and so rejected the document. The result of that rejection was that he made a decree in favour of the second defendant; and the plaintiff appeals against the decree so made.

Now the Charter under which the court is constituted—whether we look to the terms of the new Charter, or the terms of the old Charter, which was in force at the time this suit was heard—gives generally a right of appeal from the judgment of one Judge or of a Division Court to the High

(*a*) 2 Mad. H. C. Rep. 321. The suit was brought upon a writing originally unstamped; and the Munsif, having received the amount of the stamp duty and penalty when the plaint was presented, subsequently passed judgment for the plaintiff. On appeal the Principal Sadr Amín submitted to the High Court a question as to his competency to review the order of the Munsif, admitting the document in evidence; and the Court (SCOTLAND, C.J., and FRERE, J.) were of opinion that it was not competent for him to do so, under the provisions of Secs. 15, 16, and 17 of Act X. of 1862.—ED.

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Court; and I think that the right of appeal, which is so generally given by the Charter, ought to be expressly taken away by some words in a law which controls the operation of the Charter, if it was intended that it should not be exercised in a case like the present.

Sec. 17 of the Stamp Act, which, it is said, takes away this right of appeal, and makes the decision of the Judge final, says that, "in any case in which a stamp might be impressed under Sec. 15 of the Act, a Civil Court may receive in evidence a deed, instrument, or writing, not bearing the stamp prescribed by Schedule A, on payment into court of the proper amount of stamp duty, to be determined by the Court, whose decision on the point shall be final, together with the penalty required by the said section." I think that the ordinary import of these words is that the point upon which the decision of the Court is to be final, is as to what is the amount of stamp duty that the instrument ought to bear, and not whether the Court ought, or ought not, to receive the document in evidence. I do not think that the state of the English law can guide us on the subject, because it may well be that the framers of this Act considered that in India there should be a difference in the law from what it was in England; and in one respect certainly they have made a difference, in giving the power to stamp certain instruments after they have been executed, provided it should appear to the Collector that there was not an intention to evade the stamp duty.

That appears to me to be the meaning of the words in Sec. XVII., and I think that the judgment to which we have been referred—of the High Court of Madras—is really to the same effect. I do not think that the learned Chief Justice of Madras intended in that case to hold more than that the decision of the Court, when it admitted a document upon the payment of the penalty, and fixed what was the proper sum to be paid, was to be final: because he seems, referring to Sec. XVII., to ground his decision upon this, that the Court, so to speak, was in the same position as the Collector; and by Sec. 16 it is provided that the stamp which the

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Collector determines ought to be impressed upon a document "shall be taken in any court of justice to be the proper stamp." He appears, then, to think that the Court, which is put in the place of the Collector under Sec. XVII., is to do the same thing; and that the decision of the Court is intended to be final, in the same way as the decision of the Collector with regard to the proper stamp is intended to be final. His decision does not, I think, go beyond that; but even if it was intended by him to decide that whenever a document was admitted by the Court and the Court acted under Sec. XVII. by receiving it in evidence, such decision was to be considered final, the decision would not apply to the present case, where the document has been rejected by the Court, and where the consequences of the act of the Court are so very different from what they would be if the document were admitted;—the effect in the present case being to deprive the party of the means of enforcing payment of the debt due to him: whereas the effect in the other case is that, the document being admitted, the merits of the case are still to be determined by the Court.

I think, therefore, that on an appeal from a decree made by a Judge in favour of a defendant, in consequence of a decision that he came to, rejecting a document which was tendered in evidence, the Court is at liberty to review the decision.

The next question which we have to determine is, whether the learned Judge was right in the conclusion that he came to, that the case was one in which he ought not to allow the document to be received upon the payment of the penalty. The document itself certainly does not contain anything which would control its operation as a note payable on demand, because the word "due" is not followed by any date; and the circumstance that it was on a printed form with the word "due" upon it, makes this still stronger than it would have been if the word had been written, although the result in point of law would be the same, no words of memorandum sufficiently complete to control its operation appearing upon the note. The question was,

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whether there was other evidence of a contemporaneous agreement between the parties, which would control the operation of the note, and which would make the debt due on the note payable only at the expiration of three months. I think that this ought to be clearly made out by the party who seeks to do away with the effect of such a document as a promissory note, or bill of exchange; and that if agreements of this kind, which do not appear on the face of the instrument, were to be allowed to be set up as altering the operation of it, without very clear evidence on the point, a great injury would be inflicted on the negotiability and character of such instruments, with regard to the power which parties have of enforcing payment of them in courts of justice, would be greatly affected.

Now it appears to me that the evidence, putting it in the most favourable way for the defendant, is consistent with an understanding between the parties, that there was a liability to pay the amount of the note at any time when it was demanded, with an expectation—which in most cases of this kind is entertained, and reasonably entertained—that the demand will not be made for a certain period; but that the parties are not to be bound in this respect, as if there was an actual agreement not to demand payment for three months. I cannot think that there was an intention on the part of the bank so to bind itself, that it could not, under any circumstances whatever, enforce payment of the note for a period of three months. I think that the intention was rather what Mr. Gordon states, that they were reserving to themselves the power of calling for payment of the note at any time they thought fit, although there was a very great probability that the payment would not be called for till after a period of three months.

But whatever was the intention—and my own impression is in favour of the document being intended to be such as would give them the power of enforcing payment of it at any time—unless we can see that the intention was decidedly the other way, and that, whilst executing an instrument which was intended to bind them not to call for

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payment of the money for a period of three months, they were drawing the note in that form for the purpose of evading the payment of the stamp duty—which, it is to be observed, would not have been paid by the bank, but by the borrower of the money—I think that we ought not to come to the conclusion that the document should not be received upon payment of the penalty. I think—putting the case most strongly in favour of the defendant—there is so much doubt upon the matter, that we should not be justified in saying that there was an intention to evade the payment of the duty; and that that was the reason for drawing the document in the form in which we find it. And it is to be observed, that if the intention was as Mr. Gordon has stated, it was impossible for the bank to allow the note to be stamped as a note payable only at the end of three months, because that would have prevented them from doing what they were desirous of obtaining the power of doing.

It appears to me that we cannot satisfactorily come to the conclusion that the intention was to evade payment of the duty. That being so, I think the learned Judge was not justified in refusing to receive payment of the penalty, and to allow the note to be given in evidence; and his decree having been based upon that preliminary objection, it must be reversed, and the case remanded for re-trial. The costs of the appeal will be costs in the suit, and will be dealt with according to the result of the suit.

SARGENT, J.:—I concur.

Suit remanded.