

them by the resolution of 1882. Their claim for interest for the period from 1859 to 1885 is really based on the adjudication of 1882. They could not have brought the present suit at all if that resolution had not been made in their favour. They seek an advantage necessarily arising, as they assert, out of that resolution; and their claim must, therefore, be held to be based on the resolution, and to be covered by proviso (k) to s. 4 of Act X of 1876.

I concur, therefore, with the learned Chief Justice in holding that the Judge must be directed to proceed with the case.

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APPELLATE CIVIL—FULL BENCH.

.. Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Nanabhai Haridas, and Mr. Justice Jardine.

DEVACHAND AND ANOTHER (*Original Defendants*), Appellants v.  
HIRACHAND KAMARAJ (*Original Plaintiff*), Respondent.\*  
[17th January, 1889.]

*Stamp Act (I of 1879), s. 34, Proviso III—Admission of documents in evidence—Unstamped promissory note—Admitted as a bond on payment of stamp duty and penalty—Subsequent rejection too late—Order of remand—Civil Procedure Code (Act XIV of 1882), s. 578.*

The plaintiff sued to recover the amount due on three *khatas*. The defendant objected that the *khatas* were not duly stamped. The Subordinate Judge held that the instruments were bonds, and as such admitted them in evidence on payment of the proper stamp duty and penalty under s. 34, proviso I, of the Stamp Act (I of 1879). At a subsequent stage of the same suit, his successor in office was of opinion that the *khatas* in question were promissory notes; that as such they could be stamped only at the date of their execution, and that they had been illegally admitted in evidence under s. 34, proviso I. He accordingly dismissed the suit. On appeal the District Judge agreed with the Subordinate Judge that the instruments sued on were promissory notes, but held that, after they had once been admitted in evidence on payment of [450] the stamp duty and penalty, the question of their admissibility could not be subsequently raised in the suit, under proviso III to s. 34 of the Stamp Act (I of 1879). He, therefore, reversed the decree of the Subordinate Judge, and remanded the case for trial on the merits. Against this order of remand, defendants appealed to the High Court.

*Held*, that the promissory notes having been once admitted in evidence could not afterwards be rejected, on the ground of their not being duly stamped.

*Held*, also, that under s. 578 of the Code of Civil Procedure (Act XIV of 1882) the High Court could not interfere with the order of remand, as it was not an order which affected the merits of the case, or the jurisdiction of the Court.

[F., 18 B. 737 (738); 8 M.L.J. 66 (68); U.B.R. 1897—1901, 559 (560).]

APPEAL, under s. 15 of the amended Letters Patent, against the decision of a Divisional Bench (Birdwood and Parsons, JJ.) dated the 24th July, 1888, affirming the order of remand passed by Dr. A. D. Pollen, District Judge of Belgaum, in Appeal No. 121 of 1887 of the District File.

The plaintiff sued to recover the sum of Rs. 653-7 due on three *khatas* signed by the defendants' deceased brother Motiram as manager of the family. The *khatas* were marked as Exs. 3, 4 and 5 in the case. Ex. 3 ran as follows:—

"Metha Jethiram Sobhagchand, 2nd May 1882.

\* Appeal No. 18 of 1888 under the Letters Patent.

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"Rupees 268-9—Balance brought forward from p. 7 of the book, being in Gudi Surti currency. The interest thereon for one year for one hundred is fixed at the rate of Rs. 6. The time fixed for the same is twelve months. If the same is kept unpaid beyond that period, then I am duly to pay in full interest upon interest. If there be any intercalary month I am duly to pay interest in full for the same. The handwriting is that of Metha Motichand Jetiram."

The other two *khatas* were similarly worded, and were passed for Rs. 132-9 and Rs 130-11, respectively.

The defendant in his written statement objected that the *khatas* sued on were not duly stamped.

On the day on which the issues were settled, the Subordinate Judge held that the *khatas* in question were bonds within the meaning of s. 3 of the Indian Stamp Act (I of 1879). He admitted them in evidence on payment of the proper stamp duty and penalty, as required by s. 34 of the Act.

[451] His successor in office held, at the next hearing of the case, that the *Khatas* were promissory notes, and, as such, could be duly stamped only at the date of their execution. He was of opinion that they had been illegally admitted in evidence on payment of stamp duty and penalty under s. 34 of the Act. He, therefore, dismissed the suit. On appeal the District Judge agreed with the Subordinate Judge that the *khatas* were promissory notes; but he held that, as they had been formally admitted on payment of penalty, the Subordinate Judge was precluded, by the terms of proviso III to s. 34 of the Stamp Act, from calling in question their admissibility. He, therefore, reversed the decree of the Subordinate Judge and remanded the case for trial on the merits.

Against this order of remand the defendants appealed to the High Court. The appeal was argued before Birdwood and Parsons, JJ.

*Shantaram Narayan*, for appellants:—Both the lower Courts agree in holding that the *khatas* sued upon are promissory notes. As such they could only be stamped at the date of their execution: see *Sakalchand Jadhavji v. Gulabchand Motichand* (1). The first proviso to s. 34 of the Stamp Act (I of 1879) expressly excludes promissory notes from its operation. It follows, therefore, that they cannot legally be admitted in evidence on payment of stamp duty and penalty. The third proviso to s. 34 of the Act should be read with the first proviso. The third proviso protects only those documents which have been legally admitted on payment of penalty under the first proviso. It is the admission of such documents that cannot be called in question at a later stage of the same suit or proceeding. Otherwise the third proviso would cover every kind of irregularity and illegality in the admission of documents. That would be an unreasonable construction to put on the proviso. Refers to *Manick Chund v. Jomona Doss*(2); *Rajr Raghobh Kamat v. Anapurnabai*(3); *Dosabhai Kavasji v. Kherbadji Hormasji*(4); *Vinayak Sakharam Bhagwat v. Keshav Bhasnier*(5).

[452] *Daji Abaji Khare*, for respondent:—There is no necessary connection between proviso I and proviso III to s. 34 of the Stamp Act. They constitute each a separate and distinct modification of the general rule laid down in the section. The object of the section is to prevent an evasion

(1) Printed Judgments for 1882, p. 29.  
 4) 7 B.H.C R.O.C.J. 180.

(2) 8 C. 645.

(3) 10 B.H.C.R. 98.

(5) Printed Judgments for 1887, p. 40.

of the stamp laws. So long as the interests of the revenue are secured, the decision of a Court of first instance as to the admission of a document is final. It can only be modified by a superior Court under s. 50, when such Court is of opinion that more stamp duty should be levied. Subject to this modification the general rule is that a document once admitted in evidence cannot be rejected in a subsequent stage of the same case, on the ground that it is not duly stamped. Proviso III is quite clear on this point. It makes no distinction between documents legally admitted in evidence and those that are illegally admitted. The admission, whether legal or illegal, proper or improper, when once made, cannot be afterwards challenged in the same proceeding. Refers to *Khoob Lall v. Jungle Singh*(1); *Girdhari Das v. Jagan Nath*(2); *Mohammed Ewaz v. Birj Lall*(3).

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## JUDGMENT.

BIRDWOOD, J.—The decision of this appeal turns upon the construction to be put upon cl. 3 of s. 34 of the Indian Stamp Act, 1879, in reference to a promissory note not stamped at the time of its execution, in respect of which the Court, in which a suit has been brought upon such note, has levied the proper stamp duty under the Act together with a penalty of ten times the amount of the proper duty. The question is, whether, after a Subordinate Judge has so admitted the note in evidence, he or his successor in office can, in a later stage of the same suit, question the propriety of such admission and treat the instrument as inadmissible.

The present suit was brought on three promissory notes, all of which were unstamped when the plaint was filed. At the time when the issues were settled, the Subordinate Judge levied what he understood to be the proper duties on the notes, which he regarded as bonds within the meaning of the Act, together with [453] ten times the amount of those duties, as if cl. 1 of s. 34 of the Act had been applicable to them. His successor in office, who decided the suit, held the instruments to be promissory notes, which, under the Act, could be legally stamped only at the dates of execution; and, finding that they had been illegally admitted under cl. 1 of s. 34 he rejected the claim with costs. His decision was reversed by the District Judge, who was of opinion that the instruments were promissory notes, but that cl. 3 of s. 34 of the Act was a bar to the reconsideration by the Subordinate Judge, who decided the case of the order admitting the instruments made by his predecessor.

I am unable to concur in the propriety of the District Judge's order. The proper construction of cl. 3 of s. 34 is, I think, to be arrived at on a consideration of the terms of s. 50, which is referred to in cl. 3 of s. 34, and shows that an instrument is regarded, for the purposes of that section and, therefore, presumably of cl. 3 of s. 34 also, as having been admitted in evidence when it has been admitted either (1) "as duly stamped" or (2) "as not requiring a stamp" or (3) "upon payment of duty and a penalty under s. 34," *i.e.*, under cl. 1 of that section. Section 50 applies only to three classes of admissions, and those, I think, are the only admissions contemplated in cl. 3 of s. 34. It is when the admission of an instrument falls under one of these three classes that the instrument can be regarded as having been "admitted in evidence" within the meaning of the clause. When the instrument has been so admitted, its admission cannot be called in question, except as provided in s. 50. The present, however, is not a case falling

(1) 3 C. 787.

(2) 3 A. 115.

(3) 4 I.A. 16.

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under either of the three classes specified in s. 50 of the Act. The instruments sued on can only be construed as promissory notes. They are not bonds within the meaning of the Act. They were not admitted as already "duly stamped," for they were on plain paper when executed and when sued on; and could not legally be stamped after execution. Though now properly stamped they cannot even now be regarded as "duly stamped"—see *Sakalchand Jadhavji v. Gulabchand Motichand* (1); nor were they admitted as not requiring [454] a stamp, for they clearly required a stamp. They were admitted on payment of the proper duty and a penalty at the time of the settlement of issues. If such payment could be regarded as a "payment of duty and a penalty under s. 34," within the meaning of s. 50, then the view of the District Court would be correct. But a payment of duty and a penalty on a promissory note, which is expressly excluded from the operation of cl. 1 of s. 34, cannot be regarded as a payment under that section such as is contemplated in s. 50. It is a payment outside the section altogether. If a plaintiff were given a decree on promissory notes not stamped at the time of execution, but in respect of which stamp duties and penalties have been illegally levied during the progress of a suit, he would, in my opinion, obtain an advantage never intended by the Legislature. For the purposes of a suit, the Act treats as waste paper promissory notes not stamped at the time of execution. Such notes are absolutely inadmissible in evidence, and no construction can, I think, be put on cl. 3 of s. 34, which would permit the clear purpose of the Act in respect of such notes to be evaded.

I cannot put so wide a construction, on that clause as has been adopted by the District Judge, and would, therefore, reverse his order of remand, and direct him to dispose of the appeal before him according to law. As, however, Mr. Justice Parsons does not concur in this judgment, the order of the District Court must be affirmed, under ss. 575 and 590 of the Code of Civil Procedure. Costs to be costs in the cause.

PARSONS, J.—I am of opinion that the order appealed against should be affirmed. The facts are these. The plaintiff filed with his plaint an instrument which he called a *khata*. The defendant objected in his written statement that the instrument was not duly stamped. The Subordinate Judge thereupon inspected the instrument, and holding that it was a bond as defined in s. 3 of the Indian Stamp Act, 1879, admitted it in evidence on payment of the proper duty and the penalty under s. 34, and under s. 39 of the same Act certified that the "proper duty and penalty having been levied in respect [455] thereof the instrument is admitted in evidence." The Subordinate Judge who succeeded to the Court held, when the case next came before it, that as the instrument was not a bond but a promissory note, his predecessor had acted illegally in allowing the duty and penalty to be paid, and in admitting the instrument in evidence, and he thereupon rejected it, and dismissed the suit. The District Judge, in appeal, was also of opinion that the instrument was a promissory note, but he held that as it had been admitted in evidence by the first Subordinate Judge on payment of duty and penalty, and had been duly endorsed, the second Subordinate Judge was precluded by the terms of the third proviso to s. 34 of the Stamp Act of 1879 from calling in question such admission.

It is argued before us, and it is the opinion of my learned colleague, that the instrument being a promissory note none of the provisions of s. 34

apply to it, and that the admission of it in evidence on payment of duty and penalty was wholly illegal, and could be taken exception to by the successor of the Subordinate Judge who admitted it and by an appellate Court. I cannot agree to this argument or in this opinion. The Stamp Act is a purely fiscal regulation. Its sole object is to increase the revenue, and all its provisions must be construed as having in view the protection of the revenue. To that end it has enacted in s. 34 that no instrument chargeable with duty shall be admitted in evidence, acted upon, registered, or authenticated, unless such instrument is duly stamped; but it makes provisos to this by enacting (1) that certain instruments though not duly stamped shall be admitted in evidence on payment of duty and penalty, (2) that nothing shall prevent the admission of any instrument in evidence in certain criminal proceedings, and that (3) when an instrument has been admitted in evidence, such admission shall not—except as provided in s. 50—be called in question at any stage of the same suit or proceeding, on the ground that it has not been duly stamped. These three provisos ought, in my opinion, to be read separately,—that is to say, each should be considered to be a proviso to the body of the section, and not as provisos to each [456] other. I think that proviso I in no way affects the operation of proviso III any more than proviso III affects the operation of proviso II, and that it is possible, without making any change in the law as laid down in one proviso, to omit all consideration of another proviso. For instance, if the provisos I and II are left out altogether and the section then read, the law as to the power of questioning the admission of an instrument would, I conceive, be the same as it is with those provisos remaining as they are.

So read, the law is precisely what we should expect in a strictly fiscal regulation. By s. 50 the revenue is fully protected, and that object being attained, the declaration that the instrument is duly stamped once made is made final between the parties to the suit, so that no objection can henceforward be taken to the admissibility of the instrument on the ground that it is not duly stamped. Section 39 of the same Act makes this, if possible, still more clear; for, after stating how the endorsement of an instrument, on which duty and penalty has been levied shall be made, it expressly enacts that every instrument so endorsed shall thereupon be admissible in evidence and may be registered, and acted on, and authenticated, as if it had been duly stamped. The use of the words "any instrument" in the first clause, and of "every instrument" in the second clause, is noticeable, and when considered along with the absence of any such clause as occurs at the end of s. 37 and s. 38, leads me to the conclusion that the action of the Court under s. 34, however wrong it may be, is final, and cannot be questioned by any party to the suit in any subsequent proceedings.

I am fortified in this opinion by the decision in *Khoob Lall v. Jungle Singh* (1), where, following the decision in *Enayetoolah v. Shaikh Meajan* (2), it was held that no appeal lay from an order admitting an instrument in evidence, even though the objection was raised that the instrument in law was a promissory note, which it was illegal to admit in evidence on payment of duty and penalty. To the same effect is the decision in *Girdhari [457] Das v. Jagan Nath* (3), where it was held that the Collector's endorsement under s. 39 of Act XVIII of 1869 (which for

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(1) 3 C. 787.

(2) 16 W. R. C. R. 6.

(3) 3 A. 115.

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the purposes of that decision may be said to exactly correspond with s. 31 of the present Act), cannot be objected to even though he may have endorsed a promissory note in contravention of the provisions of that section. This ruling, in so far as an irregular proceeding is dealt with, may be compared with the decision of the Privy Council in *Mohammed Ewas v. Birj Lall*(1). The case in the eighth volume of the Madras Report(2) can also be cited in support of his view of the law, the *dictum* in that case being that where an instrument has been admitted in evidence and judgment delivered, its admission can only be called in question in a proceeding under s. 50.

These decisions, with the propriety of which I fully concur, are direct authorities on the point that no appeal will lie from an order admitting a document in evidence as duly stamped : and if no appeal will lie, then *a fortiori* it is not competent to one Subordinate Judge to set aside the admission of an instrument made by his predecessor in the same case. In fact, on this latter ground alone, it might be possible to support the order of the District Judge.

I may mention that no case has been cited to us in which it has been held that an instrument once admitted in evidence can afterwards be rejected on the ground of its not being duly stamped. The cases cited show merely that a promissory note cannot be stamped after execution. No doubt these cases have been correctly decided ; but they have, I conceive, no bearing whatever upon the question that is now before the Court.

There is another reason to be stated why, in my opinion, this Court cannot interfere with the order of the District Judge, and that is that the order is not one which affects the merits of the case or the jurisdiction of the Court (s. 578 of the Civil Procedure Code). There are numerous rulings to that effect under the old Stamp Acts, *ex. gr.*, *M. P. Currie v. M. E. Chatty* (3). I may supplement them with the decisions in *Sonaka* [458] *Chowdrain v. Bhoobunjoy Shaha* (4) and *Ramasami Chetti v. Ramasami Chetti* (5). The latter decision is particularly in point, for the learned Judges there say that " the document having been admitted in evidence by the District Judge we are precluded by s. 34, cl. 3, of the Stamp Act from allowing it to be called in question now. The objection is not one affecting the merits of the decision, and, therefore, under s. 578 of the Civil Procedure Code, we are prohibited from entertaining it." For these reasons my opinion is that the order should be affirmed, and under s. 575 of the Code the decree is affirmed accordingly. We agree in ordering that the costs of this appeal shall be costs in the cause.

Against this decision the defendants appealed under s. 15 of the amended Letters Patent.

The appeal was heard by a Full Bench (consisting of SARGENT, C. J., NANABHAI, and JARDINE, JJ.), who affirmed the decision and the reasoning of Mr. Justice Parsons.

*Appeal rejected.*

(1) 4 I. A. 166 (175).

(2) 8 M. 564.

(3) 11 W.R. C.R. 520.

(4) 5 C. 311.

(5) 5 M. 320.