

SEENI MUTTU v. MEERA SAIBO.

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D. C., Puttalam, 1,364.

*Prescription—Ordinance No. 22 of 1871, ss. 6, 7—Written agreement to pay certain moneys—Endorsement on document showing receipt of interest—Receipt not stamped—Inadmissibility of document to prove payment of interest so as to avoid prescription.*

Plaintiff sued to recover certain moneys due upon a written agreement which was prescribed except for the payments of interest which appeared on the back of the document.

*Held*, that, for want of stamp duty payable on each of the endorsements, the plea of prescription should prevail, unless the plaintiff paid the duty and penalty provided by the Stamp Ordinance.

The plaintiff was given a month's time to produce a certificate from the Commissioner of Stamps that the duty and penalty have been paid.

**P**LAINTEFF sued upon a document, which he called a bond, by which the defendant admitted having borrowed from the plaintiff Rs. 220, and bound himself to pay interest thereon and supply every month 9 paramas of copperra to the plaintiff at the

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rate of Rs. 50 per param. He claimed a sum of Rs. 440 as due to him upon the transaction. The defendant pleaded certain payments and prescription under section 6 of Ordinance No. 22 of 1871.

The District Judge, having held that the receipts of moneys which appeared endorsed on the document sued upon saved the case from the operation of section 6 of the Ordinance No. 22 of 1871, gave judgment for plaintiff.

The defendant appealed.

*H. Jayawardene*, for appellant.—The document sued upon is not a bond. In *Tissera v. Tissera* (2 N. L. R. 238) a bond was defined by the Supreme Court to be the acknowledgment of a promise to pay a debt in an instrument attested by a notary. The document in suit was not attested by a notary. See also *Kumaravelu v. Bawa* (Wendt, 297); *Mohamed Ali Marikar v. Assen Naina Marikar* (1 C. L. R. 40). Section 6 of the Prescription Ordinance does not therefore apply to the present case. Section 7 governs the case. It provides that no action shall be maintainable upon a written agreement unless such action shall be brought within six years from the date of the breach thereof, or of the last payment of interest. Here no payments are proved, because, though the written agreement bears on the back of it certain entries showing moneys received on account, yet as each of those endorsements has not been duly stamped as a receipt, the plaintiff cannot be allowed to benefit by such endorsements. A receipt must bear a 5-cent stamp, under the Ordinance No. 3 of 1890.

*Sampayo*, for plaintiff, respondent.—The defendant does not dispute the payments appearing on the back of the document. He does not object to them in his petition of appeal. [BONSER, C.J.—We cannot look at the endorsements for want of receipt stamps, and therefore there is no proof of any payment.] If plaintiff is given an opportunity to question the defendant, he will verbally admit the payments. [BONSER, C.J.—Even if he does so, you will have to pay the penalty provided by the Stamp Ordinance. Otherwise, by agreement between parties, the revenue may be defrauded.]

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I am of opinion that the document sued upon is not a bond. It falls under section 7 of the Ordinance No. 22 of 1871, and was prescribed, unless it has been kept alive by payments of interest within six years. On the document were certain receipts of interest.

which would, if they were proved, be sufficient to keep the debt alive. The objection was taken that these receipts ought to have been stamped, but the plaintiff insisted that they did not require stamping, and the District Judge upheld that contention. It was suggested in argument that the decision arose out of a misunderstanding of one of the exemptions under the heading of "Receipts." However, whether that be so or not, it seems to me that these receipts were inadmissible in evidence without being stamped.

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We will give the plaintiff an opportunity of putting himself right with the revenue authorities. The case will stand over for a month for that purpose.

The appeal will be dismissed, subject to his producing to the Registrar of this Court a certificate from the Commissioner of Stamps that the duty and penalty have been paid. If within a month that is not produced, then the appeal will be allowed, unless the plaintiff notices the respondent and gets further time from this Court to do so.

WENDT, J., agreed.

