

Present: Wood Rentón C.J. and De Sampayo J.

· NAKURAN v. RANHAMY.

204—D. C. Anuradhapura, 719.

—Stamp—Cancellation—No date.

When the signature over the stamp on the note was not dated, the stamp was held not to have been properly cancelled.

THE facts appear from the judgment.

*Aruianandan*, for the plaintiff, appellant.—The stamp has not been dated; but it has been written over, and cannot be used again. *14 N. L. R. 458* is an authority for the proposition that the correct date is not essential for an effective cancellation of the stamp. The only object of the provisions of the Stamp Ordinance with regard to cancellation is to prevent the use of the stamp again. This is secured by the stamp being written over.

No appearance for the respondent.

July 5; 1917. WOOD RENTON C.J.—

The plaintiff sued the defendant on a promissory note granted by him to S. L. M. Kappa Udaya, and endorsed by the latter to the plaintiff. The learned District Judge has dismissed the plaintiff's action on the ground that the signature over the stamp on the note has not been dated, and that consequently it has not been cancelled "so as effectually to obliterate (the stamp)," or "so that it cannot be used again," or so "as not to admit of" such use, as required by section 9 (1) (a) and (3) of the Stamp Ordinance, 1909.<sup>1</sup> There is no direct local authority upon the point. But in *Kistnappa Chetty v. Silva*<sup>2</sup> Lascelles C.J. and Middleton J. held, on the facts, that a stamp ante-dated by a few days on cancellation had been duly cancelled, and, on the law, that the provisions of section 9 (3) of the Stamp Ordinance, 1909,<sup>1</sup> as to the mode of cancellation are optional, so long as the stamp is so cancelled as not to be capable of being used again. Section 9 (3) of the Stamp Ordinance, 1909,<sup>1</sup> following section 8 (1) of the Stamp Act, 1891,<sup>3</sup> provides for the name or initials of the person required by sub-section (1) (a) of the same enactment to cancel the stamp being authenticated by "the true date" of the cancellation. I think that this provision shows that the Legislature attached importance to the date of cancellation

<sup>1</sup> No. 22 of 1909.

<sup>2</sup> (1911) 14 N. L. R. 458.

<sup>3</sup> 54 and 55 Vict. c. 39.

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being given. It is no doubt true that, even if the date of cancellation were written on the stamp, it might conceivably be used again. But in that case the stamp would at least have been "effectually obliterated," in compliance with the directory provisions of section 9 (3) of the Ordinance.

In the absence of any judicial authority sanctioning the proposition that a stamp can be cancelled without bearing on the face of it the date of its alleged cancellation, I am not prepared to differ from the decision of the learned District Judge on the question involved in this appeal, and I would affirm his decision, with the costs of the appeal, and, in view of the delay on the part of the defendant in taking the objection as to stamps, with the costs only of the day of the argument, namely, May 22, 1917, in the District Court.

DE SAMPAYO J.—I agree.

*Appeal dismissed.*

