

Present : De Sampayo and Dalton JJ.

1925.

NALLACARUPPEN CHETTY v. NANAYAKKARA.

391—D. C. Colombo, 11,593.

Stamps Ordinance—Bill of exchange payable on demand—Agreement to pay money in instalments on specified dates—Ordinance No. 22 of 1909, s. 3 (4 b).

Where the maker of a promissory note agreed to pay the sum due by instalments on specified dates.

Held, that it was a bill of exchange payable on demand within the meaning of section 3 (4 b) of the Stamps Ordinance.

The document having been admitted by the District Judge, such admission cannot be questioned in appeal in view of section 37 of the Stamps Ordinance.

A PPEAL from a judgment of the District Judge of Colombo.

B. F. de Silva, for defendant, appellant.

Keuneman, for plaintiff, respondent.

June 12, 1925. DE SAMPAYO J.—

The plaintiff brings this action upon a promissory note made by the defendant for Rs. 2,000 payable by instalments. A question of the proper stamping of the promissory note has been raised. The promissory note is stamped with a stamp of 6 cents and it runs in this form :—

“ The maker promises to pay to the payee by monthly instalments as hereinafter set forth the sum of Rs. 2,000.”

Then follow certain instalments payable practically at the end of every month down to October, 1918, and the final provision is that on November 30, 1918, the balance Rs. 1,000 should be paid, but the further provision is that in default of any instalment the entire balance due on the note should be paid on demand. The District Judge held that in view of the definition “ payable on demand ” in the Stamp Ordinance this promissory note should be construed as a promissory note payable on demand and therefore rightly stamped with a stamp of 6 cents. The definition referred to in the Stamp Ordinance is that which is contained in section 3 (4 b), where it declares that a bill of exchange payable on demand includes an order for the payment of any sum of money weekly, monthly, or at any other stated periods. Mr. Silva for the defendant while

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admitting the correctness of the judgment as regards the definition of a promissory note payable on demand, contends that the present promissory note is not one provided for in the sub-section referred to, because, he says, that no periods for the payment of instalments are mentioned but specified dates although they happened to be the end of a month. There is no specific authority for interpreting the words "at other stated periods" in the sense contended for. I think, considering that this is only a question of revenue we would be right in giving the expression a broad construction in order to carry out the intention of the parties. Apart from this question of correct stamping Mr. Keuneman raises the question as to whether the appellant can continue to maintain the objection and base his appeal on that point. Section 37 of the Stamp Ordinance provides that where an instrument has been admitted in evidence such admission shall not, except as provided in the following sub-section, which is not relevant to the present case, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been properly stamped. This objection was raised in the District Court and after discussion the District Judge thought—for our present purpose we may say rightly—the promissory note was duly stamped, and accordingly he acted upon it and entered judgment. Can we now in view of section 37 overrule that decision and say that the instrument is not properly stamped, and, therefore, ought not to have been admitted? I do not think so. I think the decision in *Hettiarachchy v. Wilfred*¹ which is a decision on a similar point ought to be followed.

The appeal, therefore, must be taken as entirely out of order, and I would dismiss it with costs.

DALTON J.—I agree.

Appeal dismissed.



¹ 20 N. I. P. 183.