1928.

Present: Dalton and Lyall Grant JJ.

ABDUL CADER *v.* RAWTHER.

338—D. C. Kandy, 34,304.

Stamp Ordinance—Promissory note made and stamped in India—Action in Ceylon—Production of note—Civil Procedure Code, s. 50—Ordinance No. 22 of 1909, s. 4 (b).

Where the endorsee of a promissory note, made and endorsed in India and duly stamped in India, sued the maker in Ceylon,—

Held, that the promissory note does not require to be stamped in Ceylon before it is sued upon.

A demand for payment does not amount to a presentment for payment within the meaning of section 4 (*b*) of the Stamp Ordinance.

The production of a document with the plaint does not amount to an admission of the document in evidence within the meaning of section 37 of the Stamp Ordinance.

THIS was an action brought by the plaintiff to recover from the defendant a sum of Rs. 500 due on a promissory note made by the defendant in India in favour of one Idroos Lebbe and endorsed by the latter to plaintiff in India. The plaintiff and the defendant are resident in Ceylon. The defendant pleaded that the note, although made out of Ceylon, requires to be stamped in Ceylon. The learned District Judge upheld the contention and dismissed the plaintiff's action.

N. E. Weerasooria, for plaintiff, appellant.—The Court has accepted the note in question with the plaint. Once a plaint is accepted a party to the action cannot object to it on the ground of insufficiency of stamping (*Jayawickrama v. Amarasooriya*[1]). The note has thus been admitted in evidence. It is too late now to seek to reject the note on the ground that it is not duly stamped. Section 37 supports this view. Further, the circumstances in the case make it clear that the note in question does not answer to the description of promissory notes chargeable with duty under section 4 (*b*) of Ordinance No. 22 of 1909.

Navaratnam, for defendant, respondent.—The mere production of an instrument with a plaint cannot give it any evidentiary value. Before a Court can treat an instrument as evidence of anything at all, formal proof of the document is necessary. Sections 17 and 42 of the Ordinance, which prescribe a time limit and the mode of stamping instruments executed out of the Colony, expressly exclude bills of exchange, cheques, and promissory notes. Section

[1] *(1914) 17 N. L. R. 174.*

18, however, throws on " the first holder in Ceylon of any bill of exchange, cheque or promissory note drawn or made out of Ceylon " the duty of stamping a negotiable instrument. The plaintiff being the first holder in Ceylon of a note, made in India, has failed to comply with the requirements of section 18. Although the note does not appear to have been negotiated in Ceylon, yet payment can be claimed only on presentment of the note; therefore the note answers to the description of instruments chargeable with duty.

Weerasooria, in reply.—Action is against maker. Presentment is unnecessary. It is necessary only to make indorser liable. Chalmers Bills of Exchange Act (6th ed.), section 45, at page 145. Here there has been only a demand for payment. A demand for payment is not presentment within the meaning of section 4 of the Stamp Ordinance. Presentment for payment means presentment according to mercantile usage. (*Alpe Law of Stamp Duties, 11th ed., pp. 82, 83; Griffin v. Weatherby and Henshaw.*[1])

January 26, 1928. DALTON J.—

The plaintiff (appellant) sued the defendant to recover the sum of Rs. 500 alleged to be due on a promissory note made by the defendant in India in favour of one Idroos Rawther. The note was endorsed by Idroos Rather to plaintiff and he alleges he is now the holder in due course. The endorsement is an open endorsement and is said to have been made in India. The plaintiff and defendant are now said to live in Kandy. Defendant pleaded, so far as this appeal is concerned, that the note, although made out of Ceylon, had not been properly stamped in Ceylon in accordance with the provisions of Ordinance No. 22 of 1909, and therefore plaintiff could not maintain this action. It appears to have been admitted that the note had been duly stamped in India in conformity with the law there, but it is agreed it has not been stamped in Ceylon. Two questions arise for decision on this appeal. It was first of all argued that the note had in fact been accepted or admitted in evidence by the learned Judge because it was produced in Court when the plaint was presented as required by law (section 50, Civil Procedure Code), and the learned Judge had accepted the plaint and allowed summons to issue. By section 37 of the Stamp Ordinance such admission could not later be questioned on the ground that the document had not been duly stamped, but that a penalty only could be imposed as provided by that section. I cannot agree that the production of a document to the Court under the provisions of section 50 is either the " tendering " of evidence to the Court within the meaning of the word " tender " as used in section 37 or an admission of evidence by the Court on the hearing

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of the action. It is merely the production at the filing of the plaint of evidence upon which plaintiff proposes to rely when the case comes on for trial, just as the list of documents required by section 51 is a list of what he proposes to rely upon as evidence in support of his case. That evidence he will tender to the Court in due course at the trial and the question of its admission will then be considered. A document produced under the provisions of section 50 to be filed and filed with the plaint is no more a document tendered in evidence than is a plaint that has been filed and accepted, and a plaint clearly does not answer to that description of document (and see opinion of Pereira J. in *Jayawickrama v. Amarasooriya*[1]). It has been suggested that evidence may be got in by some process of filing, in which process apparently the Court plays no part and of which the other side has no notice, but such a method of leading or producing evidence is unknown to me. The note in question has not been admitted in evidence, and therefore section 37 has no application.

It was next argued that the note did not require to be stamped in Ceylon, and the trial Judge was wrong in holding that it fell within the instruments mentioned in section 4 of the Stamps Ordinance.

The learned Judge unfortunately does not give any reasons for his conclusion, nor does he say within which of the cases mentioned the note falls. The material parts of the section are as follows:—

> 4. . . . . the following instruments and documents shall be chargeable with duty of the amount indicated . . . .
>
> (*a*) . . . . . .
>
> (*b*) Every bill of exchange, cheque, or promissory note drawn or made out of Ceylon and accepted or paid, or presented for acceptance or payment, or endorsed, transferred, or otherwise negotiated in Ceylon . . . .

Mr. Navaratnam, for the defendant, agrees that if the note does not fall within 4 (*b*) it is not chargeable with stamp duty. He urges, however, that the note is so chargeable as having been presented for payment in Ceylon. He also stated he was prepared to argue that it had also been " otherwise negotiated " in Ceylon, but later admitted he could not sustain this argument.

The document is undoubtedly a promissory note made in India, and it is also stated to have been endorsed in India. I can find nothing on the record to show where it was endorsed, but the case was presented in the lower Court and in this Court on the footing

[1] *(1914) 17 N. L. R. 174.*

that it had been endorsed in India. The plaintiff and defendant both now live in Ceylon and so the former is suing on it here. Under the Bills of Exchange Act presentment of the note for payment is only necessary to render the indorser liable on the note. No presentment was therefore necessary in this case, and there has been in fact no presentment within the meaning of that Act. It was argued, however, that any demand for payment is a presentment for payment within the meaning of section 4 of the Stamps Ordinance. That section makes use of the same phraseology as section 35 of the Stamp Act, 1891 (*54 & 55 Vict. c. 39*). An earlier Act (*17 & 19 Vict. c. 83*) in section 5 uses the same terms and has been the subject of legal decision. In *Griffin v. Weatherby and Henshaw*[1] the Court had to consider whether a bill, drawn in the Isle of Man and so for revenue purposes a foreign bill, was required to be stamped in England as having been "presented for payment, indorsed, transferred, or otherwise negotiated in the United Kingdom." Blackburn J. pointed out that none of these things had happened yet. He continued to say that "presentment for payment must mean presentment according to mercantile usage; the document itself must be present, though not the holder. No doubt there has been ample notice and demand of payment, but there has been no presentment." Lush J. says that "presentment for payment" must mean such a presentment as would be sufficient to charge indorsers or other persons collaterally liable on the bill, and the document itself must be presented so as to enable the person presenting to give it up if paid. This is an authority directly contrary to the argument addressed to us as to the meaning of the term "presentment for payment" in section 4. It must, in my opinion, be held that the document has not been presented for payment. It has not been "otherwise negotiated," for on the same authority "negotiating" can only mean doing something that can only be done with a negotiable instrument, and no such act has been shown to have been done in Ceylon.

It appears, therefore, that none of the things for which section 4 (*b*) provides have yet been done in Ceylon, and therefore the instrument is not yet liable to any stamp duty here. *Mohamado v. Manangady*[2] does not help the respondent.

It was suggested that this was an attempt to get payment of the bill, but even so it has not yet been "paid," and if judgment be obtained it would still have to be decided whether the debt due on the note had not disappeared in the judgment and whether there could under such circumstances be any payment of the note so as to bring it within section 4 (*b*).

[1] *(1868) L. R. 3 Q. B. D. 753.*

[2] *9 S. C. C. 193.*

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I have therefore come to the conclusion that the learned Judge was wrong in holding that the note was liable to stamp duty under the provisions of section 4. The decree entered must, therefore, be set aside and the case sent back to be heard.

LYALL GRANT J.—

I have arrived at the same conclusion.

Decree set aside and case sent back.