

1946 Present : Wijeyewardene S.P.J. and Jayetileke J.

KARTHIGESU KURUKKAL, Appellant, and SARMA, Respondent.

354—D. C. Point Pedro, 2.

Evidence—Unstamped receipt—Admissibility against a person who derives title from the person who issued it—Stamp Ordinance (Cap. 189), s 35, proviso (b).

Proviso (b) to section 35 of the Stamp Ordinance makes an unstamped receipt admissible in evidence, not generally, but only against the person who issued it. An unstamped receipt given by the payee of a promissory note to the maker is not admissible against an indorsee in an action brought by the indorsee against the maker.

A PPEAL from a judgment of the District Judge of Point Pedro. This was an action on a promissory note brought by the indorsee against the maker. The defendant pleaded that he had paid the full

amount due on the note to the payee before the latter indorsed the note to the plaintiff. The defendant sought, on payment of the penalty of one rupee under proviso (b) to section 35 of the Stamp Ordinance, to produce the unstamped receipt given to him by the payee for the alleged payment.

V. Arulambalam (A. Gnanapragasam with him) for the defendant, appellant.—The trial Judge has not even marked the unstamped receipt which he has ruled out. Whether a document is admitted or not it should be marked as soon as any witness makes a statement with regard to it—*Vide* Explanation to section 154, Civil Procedure Code. Secondly it is submitted that the learned Judge was wrong in ruling out the unstamped receipt, since it is provided in proviso (b) to section 35 of the Stamp Ordinance (Cap. 189) that such a receipt would be admissible in evidence against the person who gave the receipt on the payment of a penalty of one rupee by the person tendering it, if such receipt is one which should have been stamped by the giver.

[JAYETILEKE J.—You did not offer to pay the penalty before the trial Judge ruled the document out.]

The trial Judge should have requested the payment of the penalty and should have ruled out the document only on a failure to pay the penalty. Furthermore the Counsel who appeared at the trial was not given an opportunity of showing cause.

S. J. V. Chelvanayagam, for the plaintiff, respondent.—In the English Stamp Act of 1891 (*54 and 55 Victoria, Chapter 39*) section 14 [as reproduced in *The Law of Stamp Duties* by E. N. Alpe, Eleventh Edition, at pp. 33 and 34] refers to unstamped documents, but not specifically to unstamped receipts. In the Indian Stamp Act of 1899, proviso (b) to section 35 provides specifically for the admission of unstamped receipts (*vide* Indian Stamp Law by Donogh—Seventh Edition—pp. 249 and 250). The purpose of this proviso is to prevent the exclusion of receipts from being admitted as evidence against the person by whose fault they are unstamped. (*Vide* Report of the Select Committee on Clause 35 of the Bill, at p. 553 of Donogh on Indian Stamp Law.) Section 35 of our Stamp Ordinance and its proviso is an exact reproduction of the Indian Act. Only a very small percentage of these unstamped receipts would come to the notice of Court, and the Stamp Ordinance exists for the protection of the Revenue; therefore the proviso should have a limited application—*Fletcher v. Sondes*¹. Proviso (b) is very clear that the unstamped receipt is admissible only against the person who actually gave it; it does not extend to his successor in title.

V. Arulambalam, in reply.—A liberal construction is given to the words of an exception—*Warrington v. Furber*². Hence “him” in proviso (b) should be construed as including his “successors in title” too.

Cur. adv. vult.

¹ (1826) 3 Bingham 502 at 580.

² (1807) 8 East 242 at 245.

July 26, 1946. JAYETILEKE J.—

This is an action on a promissory note. The plaintiff, who is the endorsee of the note, instituted this action against the defendant, who is the maker, for the recovery of a sum of Rs. 650 being principal and interest due on the note.

The defendant pleaded in answer to the claim that he paid the full amount due on the note to the payee before the latter endorsed the note to the plaintiff.

At the trial the defendant sought to produce a receipt alleged to have been given to him by the payee for the alleged payment. That receipt was objected to by plaintiff's counsel on the ground that it was not stamped, and the objection was upheld by the trial Judge. Mr. Arulambalam contended that the trial Judge should have admitted the document on the payment of a penalty of one rupee by the defendant under proviso (b) to section 35 of the Stamp Ordinance (Chapter 189).

The proceedings do not show that the defendant's counsel had during the course of the trial, invited the trial Judge's attention to the provisions of proviso (b) to section 35, or that he had shown his readiness and willingness to pay the penalty in case the court held that the document could be admitted in evidence. However that may be, the point is now taken before us and we have to adjudicate upon it. The section reads—

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is duly stamped :

Provided that—

(a) any such instrument not being an instrument chargeable with duty of five cents only or a bill of exchange or promissory note shall, subject to all just exceptions and to the provisions of section 36, be admitted in evidence on payment of the duty with which the same is chargeable, or, in case of an instrument insufficiently stamped, of the amount required to make up the duty together with a penalty .

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| (1) in cases where the duty or penalty does not exceed Rs. 2 | | .. 2 50 |
| (2) in cases where the duty or deficiency exceeds Rs. 2 but does not exceed Rs. 7·50 | | .. 5 0 |
| (3) in cases where the duty or deficiency exceeds Rs. 7·50 but does not exceed Rs. 20 | | .. 10 0 |
| (4) where the duty or deficiency exceeds Rs. 20, the amount of the penalty to be imposed shall be determined by the Commissioner of Stamps. | | |

(b) where any person from whom a stamped receipt could have been demanded has given an unstamped receipt, and such receipt if stamped would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it.

Proviso (a) furnishes an exception to the rule enacted in the section. Proviso (b) takes a receipt which is not duly stamped out of the exception made by proviso (a). Under proviso (b) an unstamped receipt can be admitted in evidence against a person who ought to have stamped it on payment of a penalty of one rupee by the person tendering it. To me it seems clear that, according to the use of language which, in the absence of some compelling context, I must suppose the Legislature to have intended, the object of the proviso is to prevent the exclusion of a receipt from evidence against the person through whose fault it was not stamped. Mr. Arulambalam contended that proviso (b) would apply to this case as the plaintiff had derived his title to the note from a person against whom the receipt would have been admissible on payment of a penalty. I am not convinced that I ought to accept that submission in view of the very clear language of the proviso. The proviso says that the receipt is admissible, not generally, but only against the person who issued it unstamped. A proviso has to be construed strictly and the rule of strict construction requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and the spirit and scope of the enactment. (*Vide Fletcher v. Sondes* ¹)

The conclusion to which I have come as a matter of interpretation of the relevant words of proviso (b) is that the receipt is not admissible against the plaintiff. The appeal is, accordingly, dismissed with costs.

WIJEWARDENE S.P.J.—I agree.

Appeal dismissed.
