

Galstaun Vs. Hutchison

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Court : Kolkata

Decided On : Mar-18-1912

Reported in : (1912)ILR39Cal789

Judge : Lawrence H. Jenkins, K.C.I.E. C.J. and; Woodroffe, J.

Appellant : Galstaun

Respondent : Hutchison

Judgement :

Lawrence H. Jenkins, K.C.I.E. C.J.

1. The plaintiff has brought this suit to recover Rs. 58,932-1-8. In his plaint he alleges that from and after the 28th August 1905 he and the defendant had various monetary dealings: that the defendant from time to time made various part payments on account of principal and interest: that on the 1st September 1908 the account was adjusted and stated between the plaintiff and the defendant showing a balance of Rs. 45,039-9-3 due to the plaintiff, and the same was admitted and signed by the defendant as correct: that thereafter further dealings took place; and that there is now due and owing from the defendant's, the plaintiff, Rs. 58,932-1-3.
2. The plaint was instituted on the 6th of July 1911, and as provided by Order VIII, Rule I, the defendant was required to present a written statement of his defence.

3. The defendant entered an appearance through his attorneys, but he failed to present a written statement.
4. The suit was transferred from the list of defended causes to the list of undefended causes, and was heard by Chitty J, who passed a decree in the plaintiff's favour for Rs. 2,435-10-6 with interest and costs.
5. He, however, refused the rest of the plaintiffs' claim, not because it was not proved, but because it was barred by limitation, as the document by which it was sought to gain the advantage of a fresh period of limitation did not bear an anna stamp, and so (in his opinion) was inadmissible.
6. From this decree the present appeal has been prepared by the plaintiff.
7. It is beyond dispute that the sum of Rs. 58,932-1-3 would be recoverable unless barred by limitation, and that there is an acknowledgment of liability made in writing, and signed by the defendant on the 10th of September 1908, which would be a complete answer to the bar of limitation if it can be utilized.

Chitty, J.

8. Held that this acknowledgment could not be proved for want of an anna stamp, as in his opinion the instrument was an acknowledgment of a debt within the meaning of Article 1 of Schedule I to the Indian Stamp Act, 1899.
9. For the instrument to require such a stamp, all the conditions indicated in that article must be present. Though each case must depend on its own peculiar circumstances, I am unable to draw any fair distinction to the plaintiffs' detriment between the present case and that which was the subject of decision in *Nund Kumar Shaha v. Shurnomoyi* (1887) I.L.R. 15 Cal. 162 where it was held that a balance sheet prepared and signed by the defendant and showing a balance due from him was not an acknowledgment within the corresponding article of the Stamp Act of 1879.
10. If anything, the present instrument is more removed from the provisions of the Stamp Act, for here a balance was carried forward, errors and omissions were

expressly excepted; and having regard to all the circumstances of the case, I am not satisfied that the document on which the plaintiff relies is an acknowledgment within the meaning of Article 1.

11. Any other conclusion might, I think, lead to considerable inconvenience and detriment.

12. The result then is that, in my opinion, the plaintiff is entitled to the relief he seeks, and the decree of Chitty J. should be varied by passing in the plaintiff's favour a decree for Rs. 58,932-1-3 with costs of the suit as directed by Chitty, J. and also the costs of this appeal.

Woodroffe, J.

13. Learned Counsel has relied on the decision in Nund Kumar Shaha v. Shurnomoyi (1887) I.L.R. 15 Calc. 162. On the question whether a particular document in suit amounts to an acknowledgment of a debt one decision can hardly be an authority for another, for each case must depend on its own circumstances. The observations, however, as to the general nature of signed accounts in the three cases next mentioned are relevant to the matter before us. If, however, we look at the decision in Nund Kumar Shaha v. Shurnomoyi (1882) I.L.R. 9 Calc. 127 we find nothing stated beyond this: 'We have looked at the document ourselves, and we think that it is not an acknowledgment of a debt within the meaning of Article 1, Schedule I, of the Stamp Act, and we are fortified in this opinion by a decision of Mr. Justice Prinsep and Mr. Justice O'Kinealy on a very similar point in the case of Brojo Gobind Shaha v. Goluck Chunder Shaha (1882) I.L.R. 9 Calc. 127.' I may note in passing that the suit in this case was brought to recover what was due on a balance or nik ish sheet after crediting the defendant with certain amounts admitted to be due to him. It appears, therefore, that the amount of the balance sheet did not show the actual debt due by the defendant. The case as appears from the report was decided with reference to Brojo Gobind Shaha v., Goluck Chunder Shaha (1882) I.L.R. 9 Calc. 127 which was stated to raise a very similar point, and we must, therefore, look at the latter case. This held that the document in question was not a promissory note and did

not require a stamp. Prinsep, J, said: 'It is exactly 8 of the same nature as the document which forms the subject of the suit in the case of Brojender Coomar v. Bromomoye Chowdhrani (1878) I.L.R. 4 Calc. 885.' Then citing White, J.'s judgment in that case, he dismissed the appeal. We are thus taken back to the decision in Brojender Coomar v. Bromomoye Chowdhrani (1878) I.L.R. 4 Calc. 885 which was the foundation for the decision in the other two cases. Now, the facts of this latter decision are not entirely the same as those before us, but as stated the observation as to the general nature of signed accounts is helpful. There a sum of Rs. 20,825 made up of seven different advances on different dates was sued for. Each advance was entered on a hath-chitta and was signed as it was made. The first advance was stamped, and the remaining six were not. These entries were held not to come within the Stamp Act for the following reasons: The account had two sides, viz., one side of sums advanced, and the other of those received; the Court said 'the amount due varies from time to time, and depends upon the relation of the amount advanced, to the amount received. In the present case no sum is entered under the head of 'amount received,' but that is an accident and makes no difference in considering the question as to what is the nature of the document which is offered in evidence. The intention of the parties in requiring the signature or seal of the borrowers to each sum advanced is, strictly speaking, to secure under their hands an acknowledgment that the sum is advanced. Whether or not that sum is due, or a larger sum or a less sum, depends upon the state of the account' The entries were not intended to stand alone, in which case the Court said it might have been contended that they were acknowledgments requiring a stamp. In that case also no sum was entered under the 'amount received' column, yet the Court held that to be an accident and made no difference in considering the question as to what was the nature of the document (viz., an account), which was offered in evidence. If, for instance, an account is balanced at the end of a year and is accepted as correct and a separate entry were made admitting its correctness and acknowledging the balance found to be due on that account as owing to the creditor, then I conceive that such an 'entry might amount to an acknowledgment within the meaning of the Stamp Act and require a stamp. The Court in such a case might perhaps reasonably infer an intention to acknowledge a debt, notwithstanding that such

debt was transferred to the next yearly account. The question is, however, one of intention to be gathered from the circumstances of each case, and it is only necessary to deal with the facts before us. In the present case the words 'I accept this correct' were written by the plaintiff and signed by the defendant against the balance of the 1st September 1908 showing (errors and omissions excepted) that a sum of Rs. 45,039-9-3 appeared to be payable on that account by the defendant up to that date. It was an admission that up to that date the account was correct. This amount was carried forward in the account which was continued, and further debit entries were made after the date of the acknowledgment, for which alone the plaintiff has been given a decree. To use the language in the case last cited it was an accident that no further credit entries were made. There is nothing to show that it was intended that none were to be made or that the account should close with the acknowledgment. This accident did not, in the terms of the case cited, alter the character of the document. Balances were frequently struck during the course of the account, the last being in July, 1911. The plaintiff in his evidence stated that it did not occur to him at the time that the acknowledgment was taken with the object of supplying evidence (of the debt), but that he did it 'so as it to worry for accounts in future, I suppose I took it to use it when the time came as I am now doing.' The question is whether in fact the Writing is now used as an acknowledgment of a debt as apart from an acknowledgment of liability, and whether it is in fact so within the meaning of the Stamp Act. It may be that as the result of such acknowledgment of liability together with the account itself and other evidence in the case the law annexes as a consequence the obligation to pay the sum against which the acceptance of the defendant appears, but from this it does not follow that the defendant intended to acknowledge that particular sum as a debt within the meaning of the Stamp Act. Further, the account was E. and O.E. Even assuming that such a provision was for the benefit of the creditor only and that the defendant, had he gone to the witness box, would have been bound by his signature (though it is by no means clear that the defendant could not also have shown that such signature was given by mistake), it may well be argued that the insertion of such proviso made the defendant's acceptance one which was conditional on the correctness of the account. Let it be supposed that an enquiry under the E. and O.E. provision disclosed that the amount shown in the balance

was incorrect and that the amount due was more or less than that claimed, could it be said then that the defendant had acknowledged a 'debt' when the acknowledged sum did not represent that rightly claimed. It may be admitted that *Nund Kumar Shaha v. Shurnomoyi* (1887) I.L.R. 15 Cal. 162 is in one respect perhaps stronger than the present :u one (for the signature against each sum as it was advanced was strong evidence to show that the signal tare was given to witness that particular advance) as also that the dividing line may be in many cases a narrow one, but in a matter of this kind which seems, to put the matter most adversely to the plaintiff, at least open to doubt, I think we ought to follow the general principles of the decision in *Brojender Coomar v. Bromomoye Chowdhrani* (1878) I.L.R. 4 Clac. 885 upon which learned Counsel for the appellant relies, and I agree in holding that the entry relied on does not, under the circumstances of this case, amount to an acknowledgment which requires an anna stamp.

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