

Stephen Vs. Stephen and ors.

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Court : Kolkata

Decided On : Mar-28-1882

Reported in : (1882)ILR8Cal714

Judge : Wilson, J.

Appellant : Stephen

Respondent : Stephen and ors.

Judgement :

Wilson, J.

1. This is a suit on a promissory note signed by the three defendants for Rs. 1,700. Two questions were raised: 1st, How much did the plaintiff advance by way of consideration? 2nd, Is the third defendant liable on the note

2. As to the first question, on one point no doubt is raised. The amount of Rs. 1,700 was made up in part by a sum of Rs. 440, deducted for future payment of premiums on a life policy effected as security for a loan. As to this it appears, that plaintiff only paid Rs. 220, and then let the policy drop; as to Rs. 220, therefore, the consideration has failed. The main question is, whether the rest of the consideration was paid. The plaintiff says, it was. Defendants say, only Rs. 270 were paid, and that, as to the rest, the note was given for a wholly different purpose. The plaintiff swears that he has paid the money, and he is confirmed by a

witness, who says he chanced to be present. On the other side the two male defendants contradict him. The note itself gives little help. It was one of a series of transactions, in none of which did the documents represent the transaction as it really occurred. Several circumstances are admitted tending to confirm the defendant's story. On the whole, I believe the defendants' story. Therefore the decree can only be for Rs. 220 and 270.

3. The second question is as to the liability of the third defendant. It is said that he was under age when the note was signed, on the ground, that though he was over 18, yet, by reason of Section 3, of the Majority Act of 1875, he was still a minor up to 21, a guardian of his property having been appointed by the District Court of Dacca.

4. It appears that, in September 1877, the first defendant, father of the third defendant, petitioned the Dacca Court for a certificate of administration under Section 3 of the Minors Act (XL of 1858) to the property of the third defendant. On the 10th December 1879 the Judge made an order: 'Certificate of administration under Act XL of 1858 is hereby granted.' On the 10th December 1881 a certificate was issued bearing date the last mentioned day. In the meantime, between the date of the order and the issue of the certificate, the third defendant had attained the age of 18, and had signed the note in question.

5. It is not necessary to consider whether the judge might have issued the certificate dated as of the day when the Judge's order was made, or what the effect would have been. It is quite possible that if the delay were the act of the Court arising from the pressure of office business, and if the date were material, it might be the right course to date the certificate, as of the day when it was ordered, upon the principle *actus curia neminem gravabit*. Here the delay was not that of the Court but of the parties, and I must take it that the certificate was intended to operate and did operate only from the day of its date. But by then the third defendant had attained his majority and signed the note in question; therefore, the certificate affords no defence.

6. Decree against three defendants for Rs. 490 without costs.

