

*Civil Petition*1867.  
July 26.*Ex parte* DESA'I KALYA'NRA'I HAKUMATRA'I *et al.**Stamp—Petitions of Appeal—Special Appeal—Act XXVI. of 1867,  
Cl. 11 of Schedule B.*

Petitions of special appeal to the High Court at Bombay on its Appellate Side must be stamped according to the scale contained in Cl. 11 of Schedule B of Act XXVI. of 1867.

THE petitioner in this case presented a petition of special appeal to the Registrar of the Appellate Side of the High Court. This petition the Registrar refused to receive and file, on the ground of its being insufficiently stamped.

The petitioner objected that under the new Stamp Act (XXVI. of 1867) such petitions do not require any stamp. The matter was then referred to the Court, and was argued on behalf of the petitioners before TUCKER and GIBBS, JJ. Several other cases depended on the decision in this one.

*Nánábhái Haridás* for the petitioner.

TUCKER, J :—We are called upon to pass orders on a series of applications for special appeal, which the Registrar has declined to receive, as not being sufficiently stamped in accordance with the requirements of the new Stamp Act passed in the present year.

The contention is the same in all these applications, namely, that under the wording of the new Stamp Act, no stamp is required in petitions of appeal to the High Court of Judicature of Bombay in the exercise of its appellate jurisdiction under Sec. 16 of the New Letters Patent. The part of the Act relied upon is Sec. 11 of Schedule B, which is as follows :—

“ PLAINT OR APPEAL, Petition of, in suits and appeals not otherwise provided for, instituted in any Civil or Revenue Court, outside the *local limits* of the ordinary Original Civil jurisdiction of the Courts established by Royal Charter, for the recovery of any sum of money, or to obtain possession of any interest, matter, or thing.”

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It has been argued with considerable ingenuity that as the Appellate branch of the High Court cannot be said to be a court *outside* the local limits of the ordinary Original Civil jurisdiction of the courts established by Royal Charter, the provisions regarding stamps on appeals contained in this section do not apply to appeals instituted on the Appellate side of the High Court, and, as there is no other enactment with respect to such appeals, that no stamp for such petitions of appeal in any case is now required by law.

Now, it may be observed that the words in Sec. 11 of Schedule B to the Act of 1867 are almost identical with the words used in the corresponding section of Schedule B to Act X. of 1862. The only difference is that the phrase "not within" is used instead of "outside," and that the words "or Revenue" have been introduced between the words "any Civil" and "Court." At the time the Act of 1862 was passed no High Court was in existence at any of the Presidencies, and on the creation of the High Court at Fort William in Bengal an Act (No. XX. of 1862) was passed with the view of regulating what fees and stamp duties should be levied in the said court, and in Cl. 2 of this Act it was enacted—

"No instrument or writing of any of the kinds specified as requiring a stamp in the Schedule B annexed to the said Act X. of 1862, shall be filed, exhibited, or recorded in, or shall be received or furnished by, the said High Court of Judicature in any case coming before such court in the exercise of its Appellate jurisdiction under Sec. 15 of the said Letters Patent, or in the exercise of its extraordinary Original jurisdiction under Secs. 13 and 23 of the said Letters Patent, or as a court of appeal, reference, or revision under Secs. 26 and 27 of the said Letters Patent, unless such instrument or writing be upon a stamp of a value not less than that indicated by the Schedule B annexed to the said Act X. of 1862 as the proper stamps for similar instruments and writings in the said Sadr Court, anything in Sec. 30 of the said Act to the contrary notwithstanding, but subject to the proviso therein contained ;" and it was further enacted

by Sec. 10 of the said Act, "this Act shall apply *mutatis mutandis* to the High Courts of Judicature which may be established at Madras and Bombay under Act 24 and 25 Vict., Chap. 104, for those Presidencies respectively whenever such Courts shall be established. Provided that the powers vested by this Act in the Governor General in Council shall be exercised in the Presidencies of Madras and Bombay by the Governors in Council of those Presidencies respectively."

This Act continued in force till the 1st of January 1863, and its duration was further prolonged by Acts XXIV. of 1862 and XXXII. of 1863, and it is now in operation.

Sec. 30 of Act X. of 1862 is as follows :—

"Except in any Court of Justice established by Royal Charter, or in any Court of Small Causes, established within the local limits of the jurisdiction of any such Court, no instrument or writing of any of the kinds specified as requiring stamps in the Schedule B annexed to this Act shall be filed, exhibited, or recorded in any Court of Justice or Government Office, or shall be received or furnished by any public officer, unless such instrument or writing be upon a stamp of a value not less than that indicated to be proper for it by the said Schedule B. Provided that nothing in this Act shall be held to repeal any special provision in the Code of Civil Procedure or in any other Act or Regulation for the use of plain or unstamped paper in any judicial proceeding, unless such provision shall be expressly repealed by this Act." From this section it is clear that the Legislature contemplated that the stamps prescribed by Sec. 11 of Schedule B to that Act should be levied in the Şadr Court ; and from Act XX. of 1862 it is also manifest that it was the intention of the Legislature that the stamps prescribed for appeals to the Şadr Court should continue to be levied on the Appellate Side of the High Court, which had taken the place of the Şadr Court. This last Act is still in force, and the only effect of Act XXVI. of 1867 is to substitute the Schedule B annexed to that Act for the schedule which was originally annexed to Act X. of 1862.

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This second or substituted schedule must be read with the light thrown upon it by Act XX. of 1862, from which it is patent that the meaning and intent of the Legislature was that the stamps prescribed in Sec. 11 of the said schedule were to be levied in the case of appeals to the High Court on the Appellate Side; and although the imperfect and very peculiar form of expression used in the section has given some foundation for the present arguments, yet we can, with the light thrown upon the section by Act XX. of 1862, entertain no doubt of the intent of the Legislature in the matter.

We therefore hold that petitions of special appeal to this court must be governed by the section in the schedule to the new Act which the Registrar has applied, and it remains for us to determine in each case whether his objections to the valuation of the claims which have been made in several of the petitions can be sustained. The present petition on a stamp of two rupees must be rejected.

GIBBS, J., concurred.

*Petition rejected.*

Dec. 18.

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*Ex parte* VITHAL alias GOPAL GANESH BIVALKAR.

*Stamp—Khoti estate—Act XXVI. of 1867.*

*Held*, that a Khoti estate was an estate paying revenue to Government upon which an assessment is temporarily settled, and that a suit for its recovery should be assessed at eight times the annual assessment, under Act XXVI. of 1867, Schedule B, Art. 11, note (a), Sp. Rule 1 for the Bombay Presidency.

THIS was an application for the admission of a special appeal. The suit in the court of first instance was to recover the moiety of a khoti village in the Konkan District. The claim both in the original suit and the appeal was valued, under Act X. of 1862, at Rs. 639-7-4, this amount being equal to the annual assessment on the said moiety. In special appeal the claim was valued at Rs. 1,500, the alleged value of the estate sought to be recovered.