

“Mr. Morobá tendered the amount of stamp duty and penalty under Sec. 20 of the said Act; I was satisfied that the omission ‘did not arise out of any intention to evade payment of the proper duty,’ but was of opinion that, under Sec. 28 of the Stamp Act, I was not at liberty to receive the amount of the stamp and penalty tendered.

“Mr. Morobá contended that Sec. 28 was confined in its operation to ‘instruments chargeable with the duty of one anna.’ I, on the other hand, was of opinion that the section applied to all promissory notes, as well as to all instruments chargeable with a duty of one anna, and refused to receive the document without the proper stamp, or to take the amount tendered, together with the penalty.

“Thereupon Mr. Morobá required me to state a case for the opinion of the High Court on the point of the admissibility of the document on payment of the penalty.

“The amount sued for in this action being over Rs. 500, I conceive I was bound to state the case, as required under Sec. 7 of Act XXVI. of 1864; but I have since felt some doubt whether, on the construction of Secs. 7 and 8 of the latter Act, taken together, I ought not to have gone on with the case to decree, and then have pronounced a judgment on the case itself, contingent on the opinion of the High Court on the stamp point. What I did was:—I adjourned the hearing of the case until further order, and gave judgment on the question under the Stamp Act contingent on the opinion of the High Court.

“I rejected the document on the ground that it required a stamp of more than one anna, and that I had no power to receive the amount and penalty, and I gave the above judgment contingent on the opinion of the High Court, which is hereby solicited on the points—

1. Whether the course I adopted was regular?
2. Did the document in question require a stamp?
3. Was it sufficiently stamped?
4. Had I power to receive the amount of stamp duty and penalty tendered?”

1870.

DOSA'BHAI
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The instrument referred to in the case was as follows :—

“To Pársi Dosábhái Kávasji, Contractor, written by Pársi Kherbádji Hormasji, Contractor. To wit. You have agreed to deliver to me 4,000, namely, four thousand, *barás* of earth, a writing in respect of which is made on the 9th day of March 1870; and ás to Rs. 2,000, namely, two thousand, which have been agreed to be paid in terms of that writing, on account thereof Rs. 1,001, namely, one thousand and one, have been paid to you, and I am duly to pay the balance of Rs. 999, namely, nine hundred and ninety-nine, in the time of eight days from this day. The 9th day of March of the year 1870.

(On an adhesive one-anna stamp.)

“Pársi Kherbádji Hormasji his signature, the handwriting of Barjorji Kherbádji.

(On the back.)

“The 23rd day of March 1870 Rs. 500 (namely), five hundred, have been paid on account of this receipt by the hand of Dádu Miyá.”

The case came on for consideration, on the 15th of December 1870, before WESTROPP, C.J., and BAYLEY, J. There was no appearance on either side.

PER CURIAM :—We answer the first question of the learned Chief Judge of the Court of Small Causes (namely, whether the course he adopted in giving judgment as to the sufficiency of the one-anna stamp upon the document of the 9th of March 1870, and as to his inability to admit it in evidence on payment of the stamp duty and penalty, and adjourning the cause without giving judgment upon it generally, was regular) in the negative. We think that Secs. 7 and 8 of Act XXVI. of 1864, show that before referring any question in the cause to the High Court, he should have given judgment generally in the cause.

The second question—whether the document in question required a stamp—we answer in the affirmative.

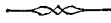
The third question—whether it was sufficiently stamped—we answer in the negative. It only bore a one-anna stamp.

whereas it should have borne a twelve-annas stamp, as being a promissory note for a sum exceeding Rs. 900 and under Rs. 1,200 payable otherwise than on demand.

1870.
DOSA'BHA'I
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HORMASJI.

The fourth question—whether the learned Chief Judge of the Court of Small Causes had power to receive the amount of the stamp duty and penalty tendered—we answer in the negative. Sec. 28 of Act XVIII. of 1839, in our opinion, clearly prohibits the reception in evidence under Sec. 20 of that Act of a promissory note, such as the present, not bearing the stamp required by law.

We have, in order to save time and possible further expense to the parties, answered these questions, although the case has been somewhat irregularly referred to this court, as indeed the learned Chief Judge himself seems to have thought. We now remit the cause to the Court of Small Causes to be disposed of in conformity with our answers to the second, third, and fourth questions; and, under the circumstances under which this case has been referred to us, we must also leave to that court the disposal of the costs of this reference.



Suit No. 561 of 1870.

NARSINGDA'S MULTA'NCHAND *Plaintiff.*
NAHA'NUBA'I, widow of Baldev Taklá, and
another *Defendants.*

Dec. 22.

Suit No. 645 of 1870.

SUMA'RMAL JOHA'RIMAL *Plaintiff.*
NAHA'NUBA'I, widow of Baldev Taklá and
another *Defendants.*

Practice—Service of Writ of Attachment—Execution—Priority.

In considering which of two writs of attachment in execution of a decree is to have priority over the other, the time when the writs are lodged in the office of the Sheriff is the criterion by which priority is to be determined, and not the time when such writs reach the hands of that officer.

THESE were two suits brought against the widow and son of Baldev Taklá, deceased, as his legal representatives.