

1870.  
July 12.

*Referred Case.*

NA'RA'YAN SADA'SHIV .....Plaintiff.  
BA'PUJI BALA'L .....Defendant.

*Stamp Act, No. XVIII. of 1869, Sec. 4—Document executed in Foreign Territory.*

An unstamped instrument executed in foreign territory and valid under the law of the place of execution is admissible as evidence in Courts of British India, provided it does not affect any property situated in British India. (Act XVIII. of 1869, Sec. 4.)

THIS was a reference made by Ráv Báhádur Janárdan Vásudevji, Judge of the Court of Small Causes at Puna. The case stated by the Judge was as follows:—

“The plaintiff sues the defendant for the payment of Rs. 111-2-0 on a guarantee, which has been executed at the foot of a promissory note made by one Chhaganlál Purshottamdás for Rs. 99-3-6.

“The guarantee was executed four months after the date of the note, and is for the balance, Rs. 87-8-0, which was found due on that note.

“Both the note and the guarantee were executed at Náusári, a town in His Highness the Gáikvád's territory, and the paper bears a stamp said to be of that government, and impressed about fourteen months after the date of the guarantee.

“The defendant, *inter alia*, contends that the document in question cannot be held valid in our courts unless it is stamped with a British stamp.

“The question, therefore, for consideration is whether an instrument executed in a foreign country and bearing a stamp of that country can be admitted in evidence in our courts without a stamp of this government impressed thereon.

“It is a principle of international law that an instrument, as to its form and solemnities, is to be governed by the *lex loci contractús*, and not the *lex solutionis* (*vide* Story's Conflict of Laws, Sec. 318); and this principle seems to me to have been recognised in our new stamp law (Act

XVIII. of 1869) inasmuch as Sec. 4 of that Act subjects to stamp duty only those of the instruments executed out of British India which relate to any property within British India

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“ I am, therefore, of opinion that an instrument executed in a foreign territory, and which is valid by the law of that place, and does not affect any property within British India, can be admitted in evidence in our courts without a British stamp.”

The reference was heard this day before GIBBS and MELVILL, JJ.

PER CURIAM:—The Court agrees with the opinion expressed by the Small Cause Court Judge.

*Small Cause Court Judge informed accordingly.*

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*Special Appeal No. 326 of 1870.*

Dec. 6.

SANGA'PPA' bin CHANBASA'PPA' ..... *Appellant.*  
 SA'HEBA'NNA' bin KENGEDA'PPA ..... *Respondent.*

*Hindú Law—Undivided Family—Manager—Payment to eldest member of Family.*

The debtor of an undivided Hindú family is not justified in paying his debt to the eldest member of the family unless such eldest member be also the manager of the undivided family. If there is no manager, the debtor should obtain a release from all the members of the undivided family.

THIS was a special appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge at Kalládgi, in Appeal Suit No. 70 of 1869, reversing the decree of the Subordinate Judge of Mudebihál.

The plaintiff, Sangáppá bin Chanbasáppá, instituted this suit to recover the sum of Rs. 8-8-0 due as rent for the year 1868-69 of an *inám* field which he alleged the defendant held as a tenant from him.

The defendant answered that the plaintiff was not the owner of the field, but that it belonged to Basáppá, who was