

4 B. 19=4 Ind. Jur. 413.

APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, Mr. Justice  
M. Melvill and Mr. Justice F. D. Melvill.

CHIMNAJI (Plaintiff) v. RANU AND ANOTHER (Defendants).\*

[13th August, 1879.]

Stamp—Agreement—Bond—Act XVIII of 1869, s. 14, sch. 2, art. 11.

When an instrument consisted of two parts, the first containing a promise to repay with interest a sum of Rs. 12-8-0, and the second a further promise to give a quantity of grain.

Held that as an agreement the instrument required a stamp of eight annas under s. 14 of Act XVIII of 1869 and sch. 2, art. 11; but that as a simple money bond it was properly stamped with a stamp of two annas, and that, if the promisee abandoned his claim for grain, he could recover upon it the principal sum advanced with interest.

THIS was a reference under s. 49 of the Indian Stamp [20] Act (No. I of 1879), made by Khan Saheb D. Temulji, Subordinate Judge of Junnar, through the District Judge of Poona.

The plaintiff on the 25th March 1879 sued the defendants for Rs. 16-15-0 and one maund and one and a quarter "paili" of nagli on a document dated the 17th January 1876, and written on a stamped paper of the value of two annas. The material portion of this document was as follows:—

"We" (meaning the defendants) "promise to repay with interest the sum of Rs. 12-8-0 borrowed from you (i.e., the plaintiff) in the month of Phalgun of this year (Shake 1797), consideration received in cash. In addition to this we promise to give 9 'pailies' of nagli in the month of Phalgun of this year, and on failure to give it (i.e., nagli) give wadh at the rate of quarter of a maund for every maund per year."

In his reference the Subordinate Judge stated that he had refused to receive the above document in evidence on the ground that it was insufficiently stamped, that thereupon the plaintiff's vakil relinquished the plaintiff's claim for the grain, and claimed only a money decree, alleging that the agreement, so far as it provided merely for money payment to the plaintiff, was properly stamped, and was, therefore, admissible. The question submitted to the High Court was "Is the document receivable in evidence to support the money claim alone, and if not, how much additional stamp and penalty will be necessary to render it so."

The parties did not appear.

## JUDGMENT.

WESTROPP, C. J.—This Court considers that the proper stamp on the instrument in question would have been a stamp of eight annas, that being the stamp required for an agreement, which is liable to a higher rate of duty than a bond for Rs. 12-8-0 (see s. 14 of Act XVIII of 1869).

The Court agrees with the Subordinate Judge in holding that the plaintiff may abandon the agreement for the payment of nagli, and may recover the principal Rs. 12-8-0, with the interest due thereon, the stamp of two annas being sufficient to cover a bond for that amount.

Order accordingly.

\* Civil Reference No. 9 of 1879.

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