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4 B. 323 = 5 Ind. Jur. 257.

PER CURIAM.

The Court is of opinion that s. 278 of Act X of 1877 has no application to the case stated by the Subordinate Judge. But s. 287 renders it the duty of the Court executing a decree, to ascertain, before issuing a proclamation of sale, all that the Court considers it material for the purchaser to know, in order to judge of the nature and value of the property. If, therefore, the property, of which sale is sought, is a debt, and the Court receives (as in the present case) notice from the alleged debtor that no such debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt; and if it comes to the conclusion that the debt does not exist, should abstain from proceeding to sale.

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4 B. 326 = 5 Ind. Jur. 259.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice (Officiating), and Mr. Justice M. Melvill.

GIRDHAR NARAN (*Plaintiff*) *v.* UMAR AJU (*Defendant*).*

[27th January, 1880.]

Stamp Act XVIII of 1869, s. 9—*One-anna stamp—Account stated—Interest.*

Under Act XVIII of 1869, s. 9, a one-anna stamp is the proper stamp for a document containing an account stated, and stipulating for payment of interest.

THIS case was referred for the opinion of the High Court by N. N. Nanavati, Subordinate Judge (Second Class) at Viramgam, in the District of Ahmedabad, with the following statement :—

[327] "The plaintiff, Girdhar Naran, has presented this day a plaint in which he sues to recover a sum of money, with interest, due on foot of an account stated and signed by the defendant Umar Aju. The account runs to this effect in plaintiff's book :—

"'*Khata* of Sipai Umar Aju.

Cr.———————————

29 Balance struck on 10th January 1879 (corresponding with) Pass Vad 3rd, after adjustment of account.

(Signed) Umar Aju.

Written by self, Rupees twenty-nine is the balance due; it is correct. Interest to be paid at one pice per rupee per mensem. This balance is struck on 10th January 1879.'

"This account bears an anna stamp.

"The question is, whether this account, which stipulates for payment of interest, is duly stamped?

"I am respectfully of opinion that it is not.

"The *khata* having been adjusted, acknowledged and signed by the debtor on 10th January 1879, the law applicable to it is the General Stamp Act, XVIII of 1869.

"It is argued for the plaintiff that this account falls within art. 5 of sch. II of Act XVIII of 1869, according to which an anna stamp is to be affixed to an acknowledgment of account. * * * *

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* Civil Reference No. 16 of 1879.

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"I think the account, the basis of plaintiff's suit, to come within this article, must contain nothing more than an admission or acknowledgment of Rs. 29 as being due. The agreement, as to interest thereon, denudes it of the character of a document to which this article may properly be made applicable. A stated account, signed by a debtor, is merely an acknowledgment, in writing, of an antecedent debt or debts, still existing, as found due when such account was stated. See *Mulchand* v. *Girdhar* (1), *Hargopal* v. *Abdul* (2) * * * The insertion of the interest clause, therefore, in the account changes it from an acknowledgment or admission of an existing debt into an agreement or rather a memorandum of an agreement. * * *

[328] "In determining what provisions of the stamp laws is applicable to a particular instrument, regard must be had to the real nature of the instrument, and not to the title which may have been given to it by the parties, if the contents of the instrument show that the title was a misnomer: *M. G. Pendse* v. *R. S. Malse* (3). * * *

"Article II of sch. II of Act XVIII of 1869 requires an eight-anna stamp on the instrument therein mentioned. This account, therefore, must bear this same stamp."

The parties appeared neither in person nor by pleaders in the High Court.

PER CURIAM.

As the terms of s. 9 of Act XVIII of 1869 are quite general, the Court thinks it applies to the document in question, and that a one-anna stamp is the proper stamp.

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4 B. 328.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice (Officiating), Mr. Justice M. Melvill and Mr. Justice Pinhey.

MOTILAL AND BHOGILAL, SONS OF LALLOOBAI, MINORS, BY THEIR GUARDIAN BHAISHANKAR (*Plaintiff*) *v.* MUNSHOOK KURAMCHAND (*Defendant*).* [27th January, 1880.]

Stamp Act XVIII of 1869, *sch. II, art.* 11—*Agreement.*

A postscript to a document contained a stipulation that the defendant should return two promissory notes deposited with him when a certain house was given back to him in good order.

Held, that the document required a stamp of eight annas under Act XVIII of 1869, sch. II, art. 11.

THIS case was referred for the opinion of the High Court by Mukunrai Munirai, Subordinate Judge (First Class) at Ahmedabad. He stated the case as follows:—

"The minor plaintiffs' father, Laloobhai, had before his death deposited with the defendant two promissory notes of Rs. 1,600, and this claim is brought on behalf of the minors, as heirs of the deceased Laloobhai, to get back from the defendant those notes.

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* Civil Reference No. 15 of 1879.

(1) 8 B.H.C.R.A.C.J. 6. (2) 9 B.H.C.R. 429.

(3) 3 B.H.C.R.A.C.J. 94.