

"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.

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, Lalloobhai, 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 Lalloobhai, to get back from the defendant those notes.

* Civil Reference No. 15 of 1879.

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

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

(2) 9 B.H.C.R. 429.

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"The deceased Lalloobhai had during his lifetime made a will, and appointed the three persons, who have signed the document in question, his trustees.

[329] "The ornaments mentioned in the document were also deposited with the defendant, and the first portion of the document was passed by the trustees when the defendant made over those ornaments to them. A postscript is added by which the trustees have agreed that the notes now in dispute should be returned by the defendant when the widow of the deceased made over to him a certain house in good condition.

"The defendant produces the document in support of his defence, which is to the effect that, until the house which he had made over to the deceased for use is given back to him, he cannot be called upon to deliver up the promissory notes, and applies to have the same stamped. He expresses his willingness to pay a stamp-duty provided for by sch. II, art. 11 of Act XVIII of 1869, and a penalty of Rs. 5 under s. 34 of Act I of 1879.

"The question is, whether I can receive the stamp-duty and the penalty, and if so, what amount of duty should be levied.

"My opinion is, that as the first portion of the document is of the nature of a discharge, chargeable with one-anna stamp-duty under art. 7 of the said schedule, I am not, under the first proviso of s. 34, authorized to admit the document in evidence, and to levy any duty thereon.

"The matters comprised in the two portions of the document are quite distinct; but as s. 34 expressly prohibits the levy of a duty and penalty on an instrument chargeable with one-anna stamp, s. 7 of the General Stamp Act would not apply. As, however, I feel a doubt on the point, and as the defendant chiefly relies on the document in question, I beg to submit the question for an authoritative decision."

The parties did not appear in person or by pleaders in the High Court.

PER CURIAM.

As the defendant seeks to make use of the latter part of the document in question for the purpose of proving that he is not bound to restore the notes until the house is given up to him in good order, the document requires, in the Court's opinion, a stamp of eight annas under art. 11 of sch. II, Act XVIII of 1869.

4 B. 330=5 Ind. Jur. 259.

[330] APPELLATE CRIMINAL.

Before Mr. Justice Pinhey and Mr. Justice F. D. Melvill.

THE GOVERNMENT OF BOMBAY *v.* GANGA, WIFE OF GOSAVI.*

[29th January, 1880.]

Marriage—Conversion of a Hindu wife to Mahomedanism—Marriage with a Mahomedan.

The conversion of a Hindu wife to Mahomedanism does not, *ipso facto*, dissolve her marriage with her husband; she cannot, therefore, during his lifetime enter into any other valid marriage contract. Her going through the ceremony of *nika* with a Mahomedan is, consequently, an offence under s. 494 of the Indian Penal Code.

* Appeal No. 272 of 1879.