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by the village officers (endorsed upon and of even date with the mortgage of 1833 for Rs. 10,000), and from the recitals in the award itself, it appears that Balaji Natu, immediately upon the execution of the mortgage, entered into the management (*vyvhat*) of the villages, and so remained in the receipt of their revenues at least until 1841, if not much later. Those revenues were stated by the pleader for the respondents, in reply to a question from this Court, to be mentioned in the evidence as amounting to about Rs. 3,700 *per annum*, so that, in the eight years extending from 1833 to 1841 alone, the plaintiffs' father, Balaji, might, at that rate, have received Rs. 29,600. It is admitted that, since the making of the decree, the plaintiffs or Balaji have received Rs. 12,000 upon it. It is, therefore, quite clear to us, that, even assuming that the mortgage of 1833 for Rs. 10,000 was for purposes essential for the temple, that amount and all interest in respect of it must have been, at the least, more than fully paid off long ago. And, under the circumstances already mentioned, the award and decree not being binding on the appellant in his capacity of hereditary trustee of the villages, and it being impossible for us to hold that the further alleged loans amounting to Rs. 4,227 constitute any valid incumbrance on the villages or their revenues, it is evident that we cannot permit the amount of interest sought by the present *darkhast* to be levied from the villages constituting the endowment of the temple or their revenues.

However, the decree of 1851 was binding on Sadanand in his individual capacity, as distinguished from his capacity as trustee of the temple; and his heir, the defendant, is liable in respect of any property of Sadanand which has come into his possession, other than the villages or other property held by him as trustee of the temple, to pay his debts: Colebrooke's Dig., Bk. I, cap. v, pl. clxvii, clxix, ccxxix; *Girdharlall* v. *Kantoolall* (1); and Mr. White's Act (Bombay Act VII of 1866).

For the reasons above given, we vary the order of the Agent for Sardars of the 2nd January, 1880, by directing that none of **[400]** the amount thereby awarded is to be levied from the villages, or either of them, above mentioned, or from the revenues thereof; but that the said amount may be levied from the other property (if any), whether ancestral or self-acquired, of the defendant's father Sadanand which may have come into the possession of the defendant. The parties must respectively bear their own costs of the application and of this appeal.

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APPELLATE CIVIL.

Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice Birdwood.

NAGU (*Plaintiff*) *v.* YEKNATH (*Defendant*).* [22nd March, 1881.]

Written statement—Court fee—The Code of Civil Procedure, Act VIII of 1859, s. 120—Act X of 1877, s. 110—Court Fees Act VII of 1870, s. 19.

A written statement of his case, tendered by a party to a suit at any time before or at the first hearing of the suit, is not liable to any Court fee, and may be written on plain paper (s. 110 of Act X of 1877).

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* Civil Reference No. 8 of 1881.

(1) 1 I.A. 321; and see 11 B.H.C.R. at pp. 83, 84.

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A written statement called for by the Court after the first hearing, is also exempt from stamp duty (s. 19 of Act VII of 1870).

[F., 12 C.L.R. 367; 2 L.B.R. 186.]

UNDER s. 617 of the Code of Civil Procedure, Rao Saheb Vaman Bodas, Subordinate Judge of Yevla, submitted the following statement of a case for the orders of the High Court:—

"This action is instituted by the plaintiff to recover from the defendant Rs. 25 due on an account.

"Under s. 111 of Act X of 1877, which is applicable to Courts of Small Causes, the defendant tenders a written statement on plain paper in which he admits the plaintiff's claim, but wants to set off, against the plaintiff's demand, Rs. 12.

"Before entering into the merits of the defendant's claim for set off, the first point that arises is, whether the written statement, being on plain paper, can be admitted and filed in the case. Hitherto the practice in this Court, as well as in the other Courts in this district, has been to require Court fees on written statements as in the case of applications filed by a party to a suit. **[401]** In the Court Fees Act VII of 1870 there is no *express* provision charging such statements with any fees. In fact, the term 'written statement' is nowhere used in the Act except in s. 19, in which certain documents are mentioned for which no fee should be charged. Among these are 'written statements called for by the Court after the first hearing of a suit.' From this it can be argued that written statements other than those that are 'called for by the Court after the first hearing of a suit' require a fee. But the Court Fees Act, being a fiscal enactment, should be construed strictly and in favour of the subject. Therefore, what is not *expressly* provided for in it, cannot be supplied by implication. Perhaps it can be said that applications are sufficiently treated of in this Act, and the term 'application' is quite comprehensive enough to include a written statement. But I cannot think so; and I think that the Legislature also, at the time of passing this Act, held written statements to be quite distinct from applications.

"Before the Act VII of 1870 became law, there was not any enactment devoted solely to regulating and fixing the Court fees chargeable on all documents filed in the Civil Courts. In the case of some of the documents, provision for the fees or stamps was incorporated at appropriate places in the body of the enactments under which those documents were required, or left, at the option of the parties, to be filed in the Courts or used as evidence: *e.g.*, in s. 119 of Act VIII of 1859 it was enacted that an application to have an *ex-parte* decree set aside should 'be written upon stamp paper of the value prescribed for petition to the Court where a stamp is prescribed for petitions'; so also in s. 122 of the same Act, which treated of written statements, it was enacted that 'when such statements are called for by the Court, they shall be received on plain paper.' Many other similar instances could be pointed out.

"Act VII of 1870 repealed these provisions, and collected the whole law as to levying Court fees in one Act. Section 122 of Act VIII of 1859, was repealed and re-enacted in s. 19 of this Act. Section 120 of Act VIII of 1859 treated of written statements to be tendered by parties at the first hearing of a suit. **[402]** The same section further enacted that 'such statements shall be written on stamp paper prescribed for petitions to the Court where a stamp is required for petitions.' It is very important to observe that this latter provision was left unrepealed

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and untouched by the Court Fees Act when similar provisions in other parts of the same Act VIII of 1859 were repealed. It cannot be said that this was due to any oversight. On the contrary, it seems that, when passing the Court Fees Act, the Legislature thought that some fee should be chargeable on written statements tendered by parties at the first hearing of the suit, and, as this was not expressly provided for by that Act in any place, left the provision in s. 120 of Act VIII of 1859 unrepealed. This shows that there is nothing in the Court Fees Act which makes written statements chargeable with any fee, and also that, while Act VIII of 1859 was in force, such statements were chargeable with a fee under s. 120 of that Act.

"Act VIII of 1859 is wholly repealed by Act X of 1877. Chapter VIII of the latter Act treats of written statements. There is nothing in it, or in the whole Act, which enacts expressly, or by implication, that such statements are chargeable with any certain fee. I cannot help, therefore, coming to the conclusion that there is no law now in force under which such statements can be charged with any fee. But as I have reasonable doubt on this point, which I think is a very important one, and as the practice in the Courts in this district is to charge such statements with the fees prescribed for applications by the Court Fees Act, I beg to submit the following point for the decision of the High Court:—

"Whether written statements tendered by parties at the first hearing of the suit are chargeable with any Court fees?

"For the reasons given above, my opinion is, that such statements are not chargeable with any fee."

There was no appearance on either side.

JUDGMENT.

The judgment of the Court was delivered by

BIRDWOOD, J.—The Court Fees Act, 1870, contains no express provision for the levy of a fee on written statements tendered at the first hearing. It is true that written statements called for by the Court after the first hearing are specially exempted from a fee **[403]** by s. 19 of the Act. But it cannot, therefore, be inferred that statements tendered at the first hearing are chargeable with a fee. For the Legislature, by expressly providing in s. 120 of Act VIII of 1859 that such written statements should be written on the stamp paper prescribed for petitions, and by leaving such provision unrepealed and unaltered by Act VII of 1870, did not then leave the liability to stamp duty to mere implication. So long as Act VIII of 1859 was in force, a stamp was properly levied on written statements tendered at the first hearing, on the authority of s. 120 of the Act, and not on the authority of any provision of Act VII of 1870. But so much of Act VIII of 1859 as had not been previously repealed was expressly repealed by Act X of 1877, s. 3, and sch. I; and Act X of 1877, s. 110, is substituted for s. 120 of Act VIII of 1859, which s. 110 contains no provision for the levy of a Court fee. Written statements tendered under s. 110 may therefore be written on plain paper.