

I, therefore, disallow the interrogatories, and the costs must be costs in the cause.

1886.

Attorneys for the plaintiff.—Messrs. *Hove, Conroy and Brown.*

WAGHJI  
THACKERSEY  
v.  
KHATAO  
ROWJI.

Attorneys for the defendant.—Messrs. *Little, Smith, Frere and Nicholson.*

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Nánabhái Haridds, and Mr. Justice Birdwood.*

NA'RA'YAN RA'MCHANDRA AND ANOTHER, PLAINTIFFS, v. DHONDU RA'GHU AND OTHERS, DEFENDANTS.\*

1885.  
September 23.

*Stamp Act I of 1879, Sch. 1, Art. 39, and Sch. II, Art. 13, Cl. (b)—Kabuláyat or lease of immoveable property for any purpose other than that of cultivation—Stamp duty, exemption from, of such lease.*

A *kabuláyat* or lease relating to immoveable property let to a tenant for any purpose other than that of cultivation is not such a lease as is contemplated by article 13, clause (b), of Stamp Act I of 1879 so as to be exempt from stamp duty but is chargeable with such duty under Schedule I, art. 39, of that Act.

THIS was a reference by Ráv Sáheb Sakhárám M. Chitale, Second Class Subordinate Judge of Mahád, in the Thána District, under section 49 of Act I of 1879.

The facts of the case were these :—

The plaintiffs in this case sought to recover from the defendants a certain quantity of grain, or to obtain Rs. 27 as the value thereof, on account of rent.

The document upon which the claim, as aforesaid, was based, was a *kabuláyat* of 10th December, 1881, signed by the defendants and engrossed upon plain paper, in which it was stated as follows :—“There is your *dhára varkas* land out of your *thikán* .....bearing Survey No. 129.....Therein we have built houses. Having agreed to pay *maktá* (fixed rent) thereof in kind....., we have built the houses, and we will be paying *maktá* on account of the same, and will live on that piece of land.”

The question referred for the opinion of the High Court was:—“Whether a *kabuláyat*, relating to immoveable property let to

\* Civil Reference, No. 27 of 1885.

1885.

NARAYAN  
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RAGHU.

a tenant for any purpose other than the cultivation of land, is exempt from stamp duty under article 13 of Schedule II of Act I of 1879?"

The Subordinate Judge was of opinion that such *kabuláyats* were not exempted under the article, inasmuch as that article applied only to *kabuláyats* relating to lands let only for the purpose of cultivation, and not for any other purpose.

There was no appearance for the parties.

SARGENT, C. J.—We think the Subordinate Judge is right. The document is a lease, and, therefore, chargeable with stamp duty under Act I of 1879, Schedule I, art. 39; unless Schedule II, art. 13, applies, which we do not think it does. It is not such a lease as the latter article contemplates.

## REVISIONAL CRIMINAL.

Before Mr. Justice Nánabhái Haridás and Sir William Wedderburn, Bart., Justice.

IN RE RAJA' VALAD HUSSEIN SA'HEB.\*

1885.  
October 1.

Security for good behaviour—Criminal Procedure Code (Act X of 1882), Secs. 110, 117 and 118—Previous convictions.

The object of taking security for good behaviour from a person is solely to secure his good behaviour in future. The mere record of previous convictions, on account of which the person has undergone punishment, does not satisfy the requirements of sections 110, 117 and 118 of the Code of Criminal Procedure (Act X of 1882), and it is wrong to use these provisions so as to add to the punishment for past offences.

THIS was a reference from J. L. Johnston, Sessions Judge of Dhárwár, who stated the case thus:—

"It appeared from the *faujdar's* report that the accused had been four times punished under sections 411, 457 and 380, and 332 and under section 110 of the Criminal Procedure Code (X of 1882). Mr. Charles, Magistrate (First Class), ordered him to show cause why he should not give security for being of good behaviour. Under section 118 he was directed to give the securities, which he had agreed to do. He was then in custody, undergoing his

\* Criminal Reference, No. 135 of 1885.