

1888  
APRIL 3.  
—  
APPEL-  
LATE  
CIVIL  
—  
13 B. 83.

the defendants Nos. 1 to 5. An objection was taken to the suit that the plaintiffs, who belong to a numerous class, having the same interest as they have in the suit, have omitted to adopt the procedure prescribed by s. 30 of the Code of Civil Procedure. With that objection it is unnecessary for us to deal, as we concur with the lower appellate Court in holding that the suit itself is not maintainable in a Civil Court.

The claim is based on the alleged right of the plaintiffs to perform the duties in respect of which the *aya* is payable. They do not seek to establish their right generally to be recognized [86] as *Mahars* from whose number the Collector could, under s. 18 of Bombay Act III of 1874, select, according to the procedure thereby provided, the persons liable to perform the duties; in which case the principle of the decision in *Ramachandra Dabholkar v. Anant Sat Shenvi* (1) might possibly be applicable to the case; but they claim the right themselves to perform the duties on account of which the *aya* is payable. The suit is, therefore, barred by s. 18 of the Act, the clear intention of which is to leave such a matter to be defined, on an application being duly made to the Collector in that behalf, by the *panchayat* appointed under the section. Section 64 of the Act, moreover, empowers the Collector to determine the right and duties of *vatandars* independently of any control by the Civil Court. The case is, therefore, governed by the decisions in *Khando Narayan v. Apaji Sadashiv* (2) and *Chinto Abaji v. Lakshmbai* (3). In the former case it was said that "the Civil Courts have no power to give to the plaintiff the declaration that he seeks, because not only can they not afford a consequential remedy, but because they can no longer establish a right which the Collector would be bound to respect." The latter case was one under s. 25 of the Act, which has no immediate bearing on the present case, as it does not apply to hereditary offices of lower degree than *patel* or *kulkarni* (see s. 3 of the Act). But the principle of that decision is applicable to the present case; and the argument relied on in the judgment of Westropp, C. J., shows that s. 18, as much as s. 25, excludes by direct implication any right on the part of the Civil Courts to declare that persons are eligible to serve as hereditary officers under the Act. On these grounds we confirm the decree of the lower appellate Court, with costs.

*Decree confirmed.*

13 B. 87.

[87] APPELLATE CIVIL.

*Before Mr. Justice Nanabhai Haridas, Mr. Justice Birdwood, and  
Mr. Justice Parsons.*

*In re* HORMASJI IRANI.\* [1st May, 1888.]

*Stamp Act I of 1879, art. 5 (c), sch. I—Agreement to rent pasture ground—Construction—General Clauses Act I of 1868, s. 2—Growing grass.*

By a rent-note dated the 28th July, 1885, the executant Babaji agreed to take for five months from the executee Hormasji a certain pasture ground attached to the military cantonment at Poona. The note recited that Babaji was to

\* Civil Reference, No. 51 of 1887.

(1) 8 B. 25.

(2) 2 B. 370.

(3) 2 B. 375.

graze thirteen she-buffaloes, at Rs. 1-10 per head, on the pasture ground for a consideration of Rs. 21-2-0 to be paid to Hormasji by two instalments: in default of payment of one instalment, the whole amount was to become payable at once. It further recited that in case the debt remained unpaid beyond the fixed period, Babaji was to pay on the amount interest at the rate of two per cent. per month. The Collector of Poona was of opinion that the rent-note in question was a lease and sufficiently stamped with four annas. The Inspector-General of Registration held the document to be an agreement falling under art. 5, cl. (c), sch. I of the Stamp Act, and chargeable with a stamp duty of eight annas. On reference by the Commissioner to the High Court,

*Held, per BIRDWOOD and PARSONS, JJ.* (NANABHAI HARIDAS, J., dissenting) that the rent-note in question was an agreement and as such chargeable with a stamp duty of eight annas under cl. (c) of art. 5, sch. I of the Stamp Act I of 1879.

*Held per NANABHAI HARIDAS, J.*, that the instrument was a lease and sufficiently stamped with four annas growing grass being immovable property within the definition of s. 2 of the General Clauses Act (I of 1868). Should, however, growing grass be not regarded as immovable property, the instrument was an agreement for or relating to the sale of goods, the price being fixed with reference to the quantity to be consumed by the cattle, and, as such, was exempt from stamp duty under sch. II. art. (a) of the Stamp Act.

THIS was a reference by A. Crawford, Commissioner, C. D., under s. 46 of the Stamp Act I of 1879.

The following is the translation of the document referred for the opinion of the High Court;—

"Shiri (i.e., property, &c.).

"Rent-note (executed) on this Tuesday, the 1st of *Ashadh Vadya* in *Shake* 1807, in the cyclical year named *Parthai*, to [88] Meherban Hormasji Aspendiarji Irani, Parsi, residing in Sadar Bazar, Camp Poona, by Babaji bin Saduji Gavli residing in Sadar Bazar, Camp Poona. I pass this rent-note in writing for a reason as follows.—You have taken the farm of the pasture ground at Camp Poona from the office of His Honor the Cantonment Magistrate Saheb Bahadur of Poona. As to that (I have agreed to pay you in respect of) my 13 head of she-buffaloes a sum of Rs. 21-2-0—twenty-one rupees and two annas—at the rate of Rs. 1-10 per head. This amount (is payable) by two instalments—the first instalment Rs. 10-9-0 and the second instalment Rs. 10-9-0—making in all Rs. 21-2-0. I will pay off by two instalments. And if I should fail to pay one instalment, I would pay the whole amount at once. If the amount should remain (unpaid) beyond the fixed period, I would pay interest (on the amount) at the rate of Rs. 2 (two) per cent. per month. If a greater number of animals than those mentioned above be found with me, I will pay you Rs. 5 for each animal. And the she-buffaloes are to graze on the said pasture ground from the day you have taken the farm to the end of 31st December, 1885. And if any additional animals of mine should go (to graze) on the said pasture ground, I would pay you eight annas more for each animal. I have duly given this rent-note in writing of my free will and pleasure and in my sound mind and understanding. The date the 28th of July in the year 1885."

The Collector of Poona was of opinion that the instrument was a lease falling under art. 39, cl. (a) of sch. I of the Stamp Act, and that it was sufficiently stamped with four annas.

The Inspector-General of Registration and Stamps held that documents of this nature were agreements falling under art. 5, cl. (c), of the schedule, and liable to a stamp duty of eight annas.

The Commissioner, C.D., agreed in the view taken by the Inspector-General of Registration and Stamps.

1888  
MAY 1.  
—  
APPEL-  
LATE  
CIVIL.  
—  
13 B. 87.

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APPEL-

LATE

CIVIL.

13 B. 87.

## OPINION.

NANABHAI HARIDAS, J.—The answer to be returned by us to the question referred, must depend upon the view we take of the nature of the agreement sent up by the Commissioner. If it be [89] regarded as one “not otherwise provided for by this Act” (*i.e.*, Act I of 1879), then it is undoubtedly chargeable with a duty of eight annas under sch. I, art. 5 (c).

We are thus led to consider two other provisions of the Act. Is it a lease within the meaning of it? If not, is it an agreement “for or relating to the sale of goods” under sch. II, art. 2 (a)? It is an agreement for the consumption of “grass” growing on a certain piece of land for a time and consideration stated therein. If such grass is “immoveable property,” the agreement is a lease within the definition of that expression contained in cl. 12, s. 3 of the Act. The expression “immoveable property” is nowhere defined in the Act itself. We must, therefore, take its definition from the General Clauses Act (I of 1868). That definition includes “land, benefits to arise out of land, and things attached to the earth”.....Section 2, cl. (5)—a definition large enough to include growing grass; and this would seem to be in accordance with English law—*Crosby v. Wadsworth*(1); *Carrington v. Roots* (2). Wherever the above definition is intended to be departed from, the Legislature has taken good care so to express itself. See the Registration Act (No. III. 1877), s. 3, and the Transfer of Property Act (No. IV, 1882), s. 3. Such being the case, the agreement is a lease within the meaning of Act No. I of 1879, and as such sufficiently stamped as held by the Collector.

But if growing grass is not “immoveable property,” the agreement is one for or relating to the sale of goods, the price being fixed with reference to the quantity to be consumed by the cattle, and as such it is exempt from all stamp duty under the Act—see sch. II, art. 2 (a). In either view of the matter, therefore, the opinion of the Inspector-General of Registration and Stamps is erroneous.

BIRDWOOD, J.—I do not think that the instrument in question is a lease. The person in whose favour it was executed took the farm of certain pasture land at Poona. When he gave contracts for grazing cattle for certain periods on this land to different persons, he did not part with the possession of the land; nor did [90] those persons undertake to cultivate, occupy or pay or deliver rent for the land or the grass. These contracts do not, in my opinion, come within the definition of a lease contained in s. 3, cl. (12) of Act I of 1879. Nor would the acquisition of the right to graze be ordinarily regarded as a purchase of goods. I am therefore, unable to concur in the opinion expressed by Mr. Justice Nanabhai.

I am of opinion that the instrument is an agreement, and that it is chargeable with a stamp duty of eight annas under cl. (c) of art. 5 of sch. I of Act I of 1879.

PARSONS, J.—In my opinion the instrument in question is not a lease within the definition of s. 3 (12) of the Indian Stamp Act, 1879, but is an agreement, and therefore, chargeable with a stamp duty of eight annas under art. 5 (c) of sch. I to the said Act.

NOTE.—See definition of “lease” in Transfer of Property Act, IV of 1882 s. 105; 9 B.L.R. 194; and 11 M. 193. See also 1 Frid : Conv. 79, 428 and 429, 13th ed.

(1) 6 East. 602.

(2) 2 M. &amp; W. 248.