

1889
JAN. 21.
APPEL-
LATE
CIVIL.
13 B. 664.

between the parties. It is admitted that the result was to treat the suit as one brought by a landlord against a tenant for holding over.

The first question to be determined is, whether the Subordinate Judge exercised a proper discretion in allowing the additional issues to be framed. The subject is discussed in *Nehora Roy Radha Pershad* (1), to which the Assistant Judge refers as authority; as also in *Damodar Madhowji v. Purmanandas Jeewandas* (2), where most of the cases are collected by Mr. Justice Scott in his judgment. It is urged in this appeal that the mention in the plaint of the rent-note and the decree obtained thereon in a previous suit, and the answers given to the Court by plaintiff's vakil, did sufficiently raise a claim on the contract of landlord and tenant. We agree, however, with the Assistant Judge, that this contract was only incidentally introduced into the plaint: as already pointed out, the Subordinate Judge took the same view of the plaint. Plaintiff is a pleader, and if he had wished to sue defendant as his tenant it would readily have occurred to him to use clear and appropriate language. We must follow the rule deducible from the cases and thus stated in *R. and N. Modhe v. S. Dongre* (3), which also was applied in *Damodar Madhowji v. Purmanandas Jeewandas* (2)—“A reasonable amendment not inconsistent with the case as it originally stood can be allowed.” Now, in *Newby v. Sharpe* (4), an amendment converting a claim on the footing of a subsisting lease into a claim on the footing of eviction was held to be an alteration of the nature of the suit. The present is somewhat the converse of that case, and in the absence of authority to the contrary, we hold that the alteration made has an equal effect, and was not authorized by s. 149. We are also of opinion that under the circumstances of this case, the vagueness of the claim and the nature of the defence, the lower [669] Court of appeal was justified in overruling the discretion of the Subordinate Judge—*Laird v. Briggs* (5).

For these reasons, we confirm the decree, with costs on appellant.

Decree confirmed.

13 B. 669.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice,
Mr. Justice Nanabhai Haridas and Mr. Justice Jardine.*

DHONDBHAT NARHARBHAT (*Plaintiff*) v. ATMARAM MORESHWAR
(*Defendant*). * [23th February, 1889.]

Stamp—Document proposing to borrow on certain conditions—Promissory note—Proposal—Contract Act, IX of 1872, s. 4.

A letter containing a request to borrow a certain sum of money, promising that the same should be repaid with interest on a certain day, is not liable to stamp duty. It is not a promissory note, but a mere proposal under s. 4 of the Indian Contract Act IX of 1872.

[F., 23 M. 156 = 7 M.L.J. 220; 27 M. 1 = 14 M.L.J. 65 (66); D., 16 M. 283.]

THIS was a reference from Ray Saheb Sakharam Mahadev Karandikar, Subordinate Judge of Devgad, under s. 49 of the Stamp Act I of 1879.

* Civil Reference, No. 18 of 1888.

(1) 5 C. 64.

(2) 7 B. 155.

(3) 5 B. 609 (614).

(4) L.R. 8 Ch. D. 39.

(5) L.R. 19 Ch. D. 22 (28).

The letter in question was in the following terms, *viz.* :—

“To Vedmurti Rajeshri Dhondhatjiappa Devasthali by Atmaram and Sakharam Moreshwar Thakur Desai. Money is required for paying the demands of Government for the current year in respect of the village of Kasardev. One Yeshvant Kashi is, therefore, sent, with whom please send Rs. 175. The money will be repaid in coming August, with interest at 9 rupees *per cent. per annum.* Dated *Kartik Shud 13th, Shake 1806.*”

Signatures of Atmaram and Sakharam.
Moreshwar Thakur Desai, by agent
Trimbak Moreshwar Thakur.”

The Subordinate Judge was of opinion that this was a promissory [670] note, and that, therefore, being unstamped it was inadmissible in evidence.

There was no appearance for the parties.

JUDGMENT.

SARGENT C. J.—The document in the present case is not an unconditional undertaking to pay a certain sum of money, but only a request to borrow on certain conditions. It constituted a proposal under s. 4 of the Indian Contract Act.

It is not, in our opinion, liable to stamp duty.

13 B. 670.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

HIRA AMBAIDAS (*Applicant*) v. TEKCHAND AMBAIDAS
(*Decree-holder*)* [28th March, 1889.]

Stamp—Certificate of sale, application for—Civil Procedure Code (Act XIV of 1882), s. 316—Practice.

An application by an auction-purchaser for a certificate of sale need bear no stamp, since by s. 316 of the Civil Procedure Code (Act XIV of 1882), it is not even required to be in writing.

THIS was a reference by Rav Saheb R. K. Desai, Subordinate Judge of Surat, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

The question referred by the Subordinate Judge for the High Court's decision was :—

“Should an application by an auction-purchaser for obtaining a certificate of sale be stamped with any Court-fee stamp? And if so, should it be stamped invariably with a Court-fee stamp of eight annas, or be stamped according to the amount of the purchase money, or the amount for which the *dakhast* was made according as the same be more or less than Rs. 50?”

The Subordinate Judge's opinion on the first part of the question was in the negative, and on the second that if it be held that it should be

* Civil Reference, No. 21 of 1889.