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stamped, it should bear a Court-fee stamp of eight annas irrespective of the amount of the purchase-money or the amount of the *darkhast*.

There was no appearance for the parties.

## JUDGMENT.

[671] SARGENT, C. J. —As s. 316, Civil Procedure Code, does not require any formal application to be made for a certificate of sale, no written application is compulsory. In case any person chooses to apply in writing, the paper, as this is optional, need bear no stamp.

13 B. 671.

## APPELLATE CIVIL.

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

RAMJI PANDU (*Plaintiff*) v. MAHOMED WALLI (*Defendant*).<sup>\*</sup>  
[28th March, 1889.]

*Civil Procedure Code (Act XIV of 1882), s. 257-A—Decree, adjustment of, by strangers—Consideration—Bond on such adjustment.*

P having obtained a decree against B, the son of the latter gave the son of the former an instalment bond for the judgment-debt without the sanction of the Court. In a suit by P's son to recover the debt on the bond,

*Held*, that the suit would lie. Section 257-A of the Civil Procedure Code (Act XIV of 1882) applies only to agreements between the parties to the suit or decree.

[F., 23 B. 502; U.B.R. (1897—1901) Civil Procedure, 252; R., 28 B. 383 (392); 19 M. 230 (232).]

THIS was a reference by Rav Sahab V. V. Tilak, Subordinate Judge of Yaval, under s. 617 of the Code of Civil Procedure (Act XIV of 1882).

The facts of the case were these:—

One Pandu, having obtained a decree against Bi Jan for Rs. 51-0-7, Bi Jan's son Mahomed subsequently, without the sanction of the Court, executed in favour of Pandu's son Ramji an instalment bond for Rs. 100 in respect of the judgment-debt. In a suit by Ramji to recover the instalments due on the bond, the Subordinate Judge referred the following question for the High Court's decision, *viz.*:—

Do the provisions of s. 257-A of the Code of Civil Procedure apply only as between the parties to the decree, and is the bond described above valid?

The Subordinate Judge was of opinion that the bond was void.

*Vasudev Gopal Bhandarkar*, for the plaintiff:—Section 257-A of the Civil Procedure Code does not apply to agreements between strangers, but to those between the parties to the suit and the [672] decree—*Yella Chetti v. Munisami Reddi* (1). Here the agreement was entered into by strangers, and is, therefore, not void.

*Vishnu Krishna Bhatvadekar*, for the defendant, contended that the Full Bench ruling in *Haji Abdul Rahiman v. Khoja Khaki Aruth*(2) did not limit the application of s. 257-A to parties to the suit only, but held all bonds or agreements in adjustment of decree as void.

\* Civil Reference, No. 19 of 1888.

(1) 6 M. 101.

(2) 11 B. 6.

JUDGMENT.

SARGENT, C. J.—We think with the Madras High Court—*Yella Chetti v. Munisami Reddi* (1)—that s. 257-A applies only as between the parties to the suit and decree. Whether on other grounds there was no good consideration for the bond is another question.

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APPELLATE CIVIL.

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

BAI SHRI MAJIRAJBAI (*Plaintiff*) v. NAROTAM HARGOVAN  
(*Defendant*).<sup>\*</sup> [28th March, 1889.]

*Court-fee—Written statement—Set-off—Civil Procedure Code (Act XIV of 1882), ss. 111 and 216—Construction.*

A written statement containing a claim of set-off is chargeable with the Court fee which would be payable on a plaint of that nature.

*Amir Zama v. Nathumal* (2) followed.

[*Diss.*, 8 C.W.N. 174 (177); *Appr.*, 15 M. 29 (34); R., 28 B. 244 (246); 32 C. 654 (661)=1 C.L.J. 364; 85 P.R. 1908=80 P. W.R. 1908=130 P.L.R. 1908; 23 T. L.R. 123 (129).]

THIS was a reference from Rav Saheb Vadilal T. Parikh, Subordinate Judge of Dholka, under s. 617 of the Code of Civil Procedure (Act XIV of 1882).

The facts of the case are as follows:—

The plaintiff claimed to recover the balance due on account of wheat sold and delivered to the defendant.

The defendant in his written statement, tendered at the first hearing and bearing a Court-fee stamp of eight annas, admitted having received the wheat, but alleged that the price had been paid in full. He further claimed a set-off of a certain sum as damages [673] sustained by him by reason of the non-delivery of certain quantity of wheat.

The question referred for the High Courts's decision was—

Whether any, and if so what, Court-fee is payable on the set-off pleaded by the defendant?

The Subordinate Judge was of opinion that no Court-fee was required.

There was no appearance for the parties.

OPINION.

SARGENT, C.J.—We agree with the opinion of the Allahabad High Court in *Amir Zama v. Nathumal* (2), having regard to the language of the concluding paragraph of s. 111 and of s. 216, that a written statement containing a claim of set-off must be regarded as a plaint in regard to such set-off, and is, therefore, chargeable with the Court-fee which would be payable on a plaint of that nature.

<sup>\*</sup> Civil Reference, No. 1 of 1889.