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17 B. 681.

proceedings under ss. 56 and 57 of the Land Revenue Code (Act V of 1877) could not be taken cognizance of by the Civil Courts, so the Vinchurkar Chief having exercised a similar power [683] under ss. 56 and 57 of the Land Revenue Code in respect of the lands in suit for arrears of revenue, the Civil Court cannot take cognizance."

On appeal by the plaintiff the District Court reversed the decree and remanded the case for trial on the merits. The Judge remarked :—

"I think the Subordinate Judge was wrong in regarding the Vinchurkar as standing in the place of Government for the purposes of the Land Revenue Code and the Revenue Jurisdiction Act. If the Vinchurkar was an independent Chief, then Vinchur was not British India, and the Acts named would not apply at all. But it is admitted that the Vinchurkar was the holder of a *saranjam* and exercised both civil and magisterial powers under *sanads* from the British Government, and there is nothing to show that he had higher rights in revenue matters than can be conferred upon holders of alienated villages under the Land Revenue Code. These do not include the power of forfeiture of land. Only forfeiture to Government is recognised (s. 153), and Government was not concerned in this matter. If the land was sold for default, it was sold subject to the first defendant's lien; if it was not sold, it is still the plaintiff's, subject to the first defendant's lien."

Defendant No. 2 preferred a second appeal.

*Shivram Vithal Bhandarkar*, for the appellant.

*Daji Abaji Khare*, for the respondent.

#### JUDGMENT.

SARGENT, C. J.—As it is clear from the judgment of the Subordinate Judge, and it is also assumed by the District Judge, that Government rendered no assistance in the proceedings for the realization of the revenue by Vinchurkar, on which defendant No. 2, relies, we must hold that the jurisdiction of the Civil Court is not taken away by s. 4 (c), Act X of 1876. And we, therefore, confirm the order with costs.

*Order confirmed.*

17 B. 684 (F.B.).

#### [684] FULL BENCH.

*Before Mr. Justice Parsons, Mr. Justice Telang, and Mr. Justice Candy.*

RATULAL RANGILDAS (*Plaintiff*) v. VRIZBHUKHAN PARABHURAM  
(*Defendant*).\* [22nd April and 27th September, 1892.]

*Stamp—Order for payment of money on a person not a banker.*

The plaintiff agreed to lend money to the defendant for payment of his trade debts, &c. In pursuance of the agreement the defendant gave his creditors "*chits*" for certain sums. These "*chits*" were addressed to the plaintiff and requested him to pay the amounts mentioned therein. He did so, and now sued for the amount advanced. It was contended by the defendant that the "*chits*" being cheques or bills of exchange were inadmissible in evidence, because unstamped. The Court found that by the agreement the plaintiff was not constituted the defendant's banker within the meaning of cl. (6), s. 3 of the Stamp Act, 1879.

*Held* that the *chits* did not require a stamp.

[D., 13 Ind. Cas. 330=38 P. L. R. 1912=184 P. W. R. 1912.]

\* Civil Reference, No. 21 of 1891.

THIS was a reference made by Khan Bahadur Burzorji Edalji Modi, Judge of the Court of Small Causes at Surat, under s. 49 of the Indian Stamp Act (I of 1879).

The facts stated in the reference were as follows:—

The plaintiff agreed to lend the defendant money required by the latter for paying his trade debts, &c. In pursuance of this agreement the defendant between the 24th July, 1888, and the 5th November, 1888, gave "*chits*" to his creditors addressed to the plaintiff. These "*chits*" were all in the following form:—"To Patel Ratulal Rangildas written by Vrizzbukhandas Parbhuram. Give Rs. (stating amount) to (stating name of payee). Dated, &c."

These *chits* were presented to the plaintiff, who paid the amounts mentioned in them, and got a receipt endorsed on the back of each "*chit*."

The plaintiff after giving credit for certain payments brought this suit for Rs. 499. The defendant contended that the "*chits*" were inadmissible in evidence, unless stamped with an anna stamp, as bills of exchange or cheques, and that the duty and penalty could not be accepted under s. 34 of the Stamp Act I of 1879.

[685] The Judge submitted the following question for decision:—

"Whether the *chits* \* \* are chargeable with a stamp duty of one anna either under article 19 of sch. I of Act I of 1879 as cheques or under any other provision of the Stamp Act."

The opinion of the Judge was that the "*chits*" were not chargeable with a stamp duty, as they were not cheques.

TELANG, J.—The statement of the agreement in the plaint, as summarized by the Small Cause Court Judge, is very loose, and it is not easy from that statement to make out with precision the relations of the parties as created by that agreement. I think it will be better to ask the Small Cause Court Judge to take evidence as to the nature of the original agreement (which does not appear to be in writing) and certify his finding on such evidence before we express an opinion on the question put. As the matter stands, I am inclined to think that the plaintiff was *not* a 'banker,' and that the *chits* in question need not have been stamped. The plaintiff appears only to have undertaken to lend money as required for the purpose indicated, and that alone can hardly constitute him the defendant's 'banker.'

BIRDWOOD, J.—I concur in the proposed reference. The following issue might be sent down for trial:—

"Whether the plaintiff was constituted by the alleged agreement the defendant's banker, within the meaning of cl. (6) of s. 3 of the Indian Stamp Act, 1879?"

Both parties should be allowed to give evidence as to the nature of the agreement, and the finding should be certified within three months.

SARGENT, C. J.—I concur.

The case was accordingly sent back, and the finding of the Judge on the above issue was in the negative. The case came again before the Full Bench.

#### JUDGMENT.

PER CURIAM.—The Small Cause Court Judge having found on the issue in the negative, the answer to this reference must also be in the negative.

Order accordingly.