

## APPELLATE CIVIL.

Before Mr. Justice Ranade, Mr. Justice Crowe and Mr. Justice Whitworth.

LAXUMIBAI (PLAINTIFF), v. GANESH RAGHUNATH (DEFENDANT).\*

1900.

November 30.

Stamp Act (II of 1899), article I, schedule I—Acknowledgment—

Stamp—Agreement.

Plaintiff sued upon an acknowledgment passed by the defendant to the following effect :—

“This day rupees two hundred and forty-one I received. The interest thereon is by agreement fixed to be at the rate of Re.  $\frac{3}{4}$  per cent per month. This is the account in respect of the same.”

The acknowledgment bore an anna stamp.

*Held*, that the above acknowledgment was an agreement and as such required an eight-anna stamp.

This was a reference by Ráo Sáheb B. S. Joshi, Second Class Subordinate Judge of Mahád, under section 60 of the Indian Stamp Act (II of 1899).

Plaintiff sued upon an acknowledgment signed by the defendant on 16th January 1900.

The acknowledgment bore an adhesive stamp of one anna and ran as follows :—

“The account given in writing to Laxumibai, widow of Rango Raghunáth Chitre, inhabitant of Mahád, by Ganesh Raghunath Tipnis, inhabitant of Mahád, is as written below :

“Ganesh Raghunath Tipnis, inhabitant of Mahád, táluca Mahád.

Cr.	Rs.	Dr.	Rs.
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241

The lunar date—the 1st of Poush Vadya, the English date the 16th of the month of January of the year 1900—

On this day rupees two hundred and forty-one I received. The interest thereon is by agreement fixed to be at the rate of Re.  $\frac{3}{4}$  per cent per month. This is the account in respect of the same.”

With reference to this acknowledgment the Subordinate Judge of Mahád made the following reference :—

\* Civil Reference No. 15 of 1900.

1900.

LAXUMIBAI  
v.  
GANESH  
RAGHUNATH.

“The plaintiff has brought this suit to recover Rs. 241 principal and Rs. 11-1-2 interest on an acknowledgment signed by the defendant on 16th January 1900.

“The acknowledgment mentions the fact of interest at 12 annas per cent per month having been agreed upon, but contains no express stipulation to pay. In the Stamp Act passed last year (Act No. II of 1899) the following proviso has been inserted in article 1 of schedule 1:

‘Provided that such acknowledgment does not contain any promise to pay the debt or any stipulation to pay interest or to deliver any goods or other property.’

“This proviso is an improvement upon the Stamp Act of 1879, which did not contain it. The Legislature however, while excluding acknowledgment containing a promise to pay the debt or a stipulation to pay interest or to deliver goods or other property from the applicability of article 1 of schedule 1, has neither said within the category of what documents or instruments they are to be placed, nor has it specified the amount of stamp duty leviable on them. It need not be said that the proviso as regards interest being intended to be an exception to section 23 is not controlled by it. Further, it seems from the definition of the word ‘instrument’ given in clause 14 of section 2 of the Act that an acknowledgment is not intended to be included within it.

“Now the acknowledgment sued on cannot be held to be a bond, for, besides being unattested, it creates no express obligation and contains no express promise to pay. It is true that the definition of the word ‘bond’ as given in the Act is not exhaustive, but the very word ‘bond’ in its etymological as well as general sense conveys the idea of an express obligation, similarly the acknowledgment cannot be treated or dealt with as a promissory note, for the essential element of the latter, *viz.* a promise to pay, is absent. The above being my difficulties, I think the only possible way of escape is to treat the acknowledgment as such and as falling within article 1 of schedule 1, in spite of the reference to the rate of interest which it contains. All fiscal enactments must be construed strictly, and inasmuch as the acknowledgment in question contains no express stipulation to pay interest, it must be held that it is not affected by the proviso to article 1 of schedule 1 of the Act. It might

be urged that if it does not contain an express promise to pay, it at least implies such a promise. But if such a contention were allowed, even a bare acknowledgment would not come within the purview of article 1 of schedule 1, because every acknowledgment must imply a promise to pay, and more especially when it is obtained to supply evidence of money lent and advanced. For the above reasons I refer the following question for the opinion of the Honourable High Court:

‘Whether the acknowledgment relied on is sufficiently or insufficiently stamped, and if the latter, what is the amount of stamp duty leviable on it.’

“My opinion on the above question is that the acknowledgment is sufficiently stamped, for reasons already set forth above. I am, however, not sure of the correctness of my opinion, and hence the necessity for this reference.”

The reference was argued before Ranade, Crowe and Whitworth, JJ.

Ráo Bahádur *V. J. Kirtikar*, Government Pleader, for Government.

There was no appearance for either party.

*Per curiam*:—It seems to us clear that the acknowledgment in question must be treated as an agreement. The provision about interest has reference to the future, and is not covered by the past acknowledgment. The addition of the proviso in the new Act seems clearly to have been made to remove all doubts suggested by the decisions on the old article. As an agreement the document will have to pay 8 annas stamp.

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1900.

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