

APPELLATE CIVIL.

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

1900.

November 30.

IN RE THE HIMAT PROVIDENT SOCIETY, LIMITED.*

Indian Stamp Act (II of 1899), schedule I, article 47 (d)—Certificate
of membership—Policy of life insurance.

The certificate of membership of a Provident Society was to the following effect:—

“You have, on condition of your conforming to the rules and regulations of this society from time to time in force, insured your life in the class of this society at the age of

“The name of Mr. _____, residing at _____, has been registered as that of the person to whom the amount due under the rules of this society after your death should be paid.”

Held, that the above certificate was a policy of life insurance within the meaning of article 47 (d) of Act II of 1899, and as such liable to pay *ad valorem* duty.

REFERENCE under section 57 of the Indian Stamp Act (II of 1899), by F. S. P. Lely, Esq., Commissioner, Northern Division.

The reference was in the following terms:—

“A company called the Himat Provident Society, Limited, has been formed at Nadiád (Kaira District) for the purposes of insurance of lives of its members and distribution of profits among them &c.

“The question whether the certificate of membership of the company was chargeable with a stamp duty of one anna under article 17 of schedule I of the Indian Stamp Act I of 1879 having been submitted to the Collector for decision (probably under section 30 of the said Act), he was of opinion that as the certificate specified the share held by a member of the company it was *prima facie* evidence of the title of the member to the share therein specified under section 54 of Act VI of 1882, and that therefore it was liable to a stamp duty of one anna; but as he felt doubtful he referred the matter to me on 31st March 1899 under section 45 of the Act. I replied on the 24th April following that the certificate was liable to a stamp duty of one anna under article 17 of schedule I of Act I of 1879.

“On 15th May 1899 he submitted the question for my reconsideration, stating as under—

“On a second reading of the certificate in question I find that it is not a certificate of the particular matters described in article 17 of schedule I of the

* Civil Reference, No. 22 of 1900.

Stamp Act of 1879, inasmuch as it does not give the member any title to any *share, scrip, or stock* in or of the company or association. I overlooked this point when I made the first reference. As stated in paragraph 2 of my No. 1876, dated 31st March last, the certificate of membership guarantees payment of the amount of money admissible under rules of the company after the death of the holder or of the person insured, such an instrument, although styled 'certificate,' is a policy of life insurance pure and simple and therefore chargeable with *ad valorem* stamp duty under article 49 (c) of schedule I of the said Act (*vide* Madras Board's proceedings of the 5th February 1885, No. 381, and Madras Government order No. 377, dated the 27th March 1885). In these decisions a certificate of membership in the Madras Hindu Family Provident Society has been held to be a policy of life insurance.

"The other Collectors of the Division were consulted and they were of the same opinion, *i.e.* the certificate is a policy of insurance and was therefore liable to a stamp duty prescribed by article 47 (d) of schedule I of the Indian Stamp Act II of 1899.

"In Madras (Government order No. 377, dated 27th March, 1885) it was ruled that the certificate was a policy of life insurance and therefore chargeable with *ad valorem* stamp duty under article 49 of the Indian Stamp Act I of 1879.

"The certificate entitles the person whose name is registered by the company to receive the amount of money admissible under the rules of the company after the death of the policy-holder. It therefore seems to be a policy of insurance (section 2 (19) (b) of Act II of 1899) and liable to an *ad valorem* stamp duty under article 49 of Act I of 1879 or article 47 (d) of Act II of 1899 (which latter section applies only to similar certificates passed since the coming into force of that Act)."

The Commissioner, N. D., referred the following question for the decision of the High Court:—

"With what stamp duty is the certificate of membership of the Himat Provident Society, Limited, chargeable."

The certificate was in the following terms:

(Translation of the certificate.)

Certificate of number ____
 The Himat Provident Society, Limited.
 Certificate of Membership.
 Mr. ____
 Address ____

You have, on condition of your conforming to the rules and regulations of this society from time to time in force, insured your life in the _____ class of this society at the age of _____

The name of Mr. _____, residing at _____, has been

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registered as that of the person to whom the amount due under the rules of this society after your death should be paid.

Dated Nadiád ____.

Compared by Karkun ____.

____ Director.

____ Secretary and Manager.

N.B.—The certificate should be preserved as it should accompany death certificate.

The reference came on for argument before Ranade, Crowe, and Whitworth, JJ.

Ráo Bahádur V. J. Kirtikar, Government Pleader, against the reference.

Per Curiam :—We are of opinion that the certificate in question does not come under article 19, but falls under article 47 (*d*) of Act II of 1899, and is liable to pay *ad valorem* duty.

ORIGINAL CIVIL.

Before Mr. Justice Crowe.

1901.

March 11.

DICK AND OTHERS, PLAINTIFFS, v. DHUNJI JAITHA AND
LUDHOO PREMJI, DEFENDANTS.*

Civil Procedure Code (XIV of 1882), section 153—Joint debtors—Suit against several joint debtors—Judgment against one joint debtor who admits claim does not bar suit against others—Contract Act (IX of 1872), section 43—Partners—Practice—Procedure.

In an action against two alleged partners, which came on as a short cause, one of the defendants admitted the claim and judgment was therefore passed against him for the amount claimed. The second defendant denied his partnership with the first defendant and his liability to the plaintiffs, and on his application the case as against him was transferred to the list of long causes and postponed. He then filed a supplemental written statement in which he pleaded that the cause of action alleged in the plaint was joint; that it had become merged in the judgment recovered against the first defendant and that further proceedings in the suit were therefore barred. A preliminary issue on this point was raised and argued.

Held, that the suit should proceed. In an action commenced against several

* Suit No. 14 of 1901.