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But while a creditor in the position of the present plaintiff is entitled to sue, he can only do so on behalf of all other creditors of the transferer, so that when the case goes back to be dealt with on the merits, it will be necessary for the Court to bear this in mind, and require such amendments as may be necessary to bring the suit into conformity with this rule of law.

As far as this appeal is concerned the order of the District Judge is confirmed. Costs to be costs in suit.

Order confirmed.

APPELLATE CIVIL.

*Before Mr. Justice Chandavarkar, Mr. Justice Batty and
Mr. Justice Aston.*

NANDUBAI AYAL MANGALDAS BHANJI (PLAINTIFF) v.
GAU BIN HALIA BAGAL (DEFENDANT)*

1902.

December 4

Stamp—Indian Stamp Act (II of 1899), schedule I, articles 23, 24—Conveyance—Havala⁽¹⁾—Letter by a debtor authorising payment to his creditor of money due to him (the debtor) by a third person.

The defendant authorized the plaintiff, his creditor, to receive a sum of money on his behalf, due to him by the Panjrapol authorities at Bhiwandi, by a letter which ran as follows :

To—The DAROGA OF THE PANJRAPOL, Bhiwandi.

I, Gau bin Halia of Khoni, beg to apply that I have completely fulfilled the agreement to supply fodder for Samvat year 1956, and that the sum of Rs. 22, due to me on account, should be made over on my behalf to Shet Mangaldas Bhanji. He will sign on my behalf, and I consent to his doing so. This application for the *havala* is given in writing. It is requested you will accept it.—6th March 1900.

(Signed) GAU HALIA.

This letter was written on an unstamped paper. On a reference by the Subordinate Judge to ascertain the requisite stamp upon it,

Held, that as the document in question effected a transfer of property by defendant to his creditor (plaintiff) in consideration of a debt due to the

* Civil Reference No. 17 of 1902.

(1) *Havala* means an order or draft for money drawn by a ryot on the banker or grain-dealer to whom he has sold his crop or entrusted it for sale. (Wilson's Glossary of Judicial and Revenue Terms, p. 204.)

latter, it fell within the definition of conveyance in the Indian Stamp Act (II of 1899) and should be stamped as such.

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REFERENCE by Ráo Sáheb Janardhan Damodar Dikshit, Second Class Subordinate Judge of Bhiwandi, under section 60 of the Indian Stamp Act (II of 1899).

The plaintiff sued to recover money alleged to be due by the defendant to the plaintiff's deceased husband Mangaldas Bhanji. At the hearing the defendant relied (*inter alia*) on the following *havala* addressed by him to the Panjrapol authorities at Bhiwandi, requesting that a sum of Rs. 22, which was due by them to him, should be paid on his behalf to the said Mangaldas Bhanji:

To—The DAROGA OF THE PANJRAPOL, Bhiwandi.

I, Gau bin Halia of Khoni, beg to apply that I have completely fulfilled the agreement to supply fodder for Samvat year 1956, and that the sum of Rs. 22, due to me on account, should be made over on my behalf to Shet Mangaldas Bhanji. He will sign on my behalf, and I consent to his doing so. This application for the *havala* is given in writing. It is requested you will accept it.—6th March 1900.

(Signed) GAU HALIA.

The defendant also relied on certain receipts given by Mangaldas Bhanji to the Panjrapol authorities for moneys similarly paid to him by them on the plaintiff's behalf. These receipts were contained in bound books and receipt stamps were affixed against the entries of payment and the signatures of the recipients were taken upon them. As the books belonged to a person not a party to the suit, copies of the entries and of the *havala* were placed on the record under section 141-B, clause 2, of the Civil Procedure Code (Act XIV of 1882). Their originals were in Gujarati. The Clerk of the Court attested the copies under clause 3 to section 141-A of the Civil Procedure Code on the strength of affidavits made by the person making the copies and translations. These copies were not certified and were produced on plain paper.

The Subordinate Judge referred to the High Court the following questions:

1. Is the letter authorizing payment of the money to Mangaldas liable to stamp duty under Act II of 1899, and if so, with what stamp duty?

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2. Are the copies of entries from the receipt books as well as that of the aforesaid letter required by the Court in pursuance of the provisions of section 141-A, clause 2, sub-clauses 1 and 2, to be placed on the record and which can be exhibited independently under section 141, clause 2, require to be stamped either under the Stamp or Court Fees Act?

The opinion of the Subordinate Judge on the first point was that the letter in question is either a bill of exchange payable on demand or a letter of credit and liable to be stamped with a one-anna stamp either under article 13, clause (a), or article 37 of schedule I of Act II of 1899. (2) That the copies required by the Court were not liable to be stamped either under the Stamp or the Court Fees Act.

There was no appearance for either party.

CHANDAVARKAR, J.—My answer to the first question is that the paper containing the *havala* is a conveyance and must be stamped as such under the Indian Stamp Act (II of 1899).

“An order for payment of money, though expressed to be payable out of a definite debt or fund, must be properly stamped as a bill of exchange, and if not stamped at the time of issue, cannot be stamped afterwards. But an order for payment out of a debt accruing due under a contract, as for goods sold, or for work and labour, or the like, is an assignment of a debt which must be stamped as a transfer of property” (Leake on Contracts, 3rd Edition, page 1005, citing *Buck v. Robson*,⁽¹⁾ and *Ex parte Shellard*⁽²⁾). In *Ex parte Shellard* a letter from a creditor to his debtor for payment of money to a creditor of the former was held liable to be stamped as a bill of exchange. But in *Buck v. Robson*, Cockburn, C.J., and Mellor, J., differed from that view and held such a letter to be an assignment of a debt for the purposes of stamp duty. Cockburn, C.J., said (page 691): “In our acceptance of the term, an order for the payment of money presupposes moneys of the drawer in the hands of the party to whom the order is addressed, held on the terms of applying such moneys as directed by the order of the party entitled to them. No such obligation arises out of the ordinary contract of sale. If a purchaser buys goods of a manufacturer or a tradesman, he undertakes to pay the price to the seller, not to a third party, who is

(1) (1878) 3 Q. B. D. 686.

(2) (1873) L. R., 17 Eq. 109.

a stranger to the contract, nor will the mere order or direction of the seller to pay to a third party impose any such obligation upon him ; it is only when and because the right of the seller to the price has been transferred to the third party by an effectual assignment that the assignee becomes entitled as of right to the payment.... Being ourselves decidedly of opinion that an order from a creditor to his debtor under an ordinary contract for the price of goods, or for work and labour, or the like, to pay to a third party can confer a right on the latter only so far as it operates as an assignment of the debt, we feel ourselves warranted, on the authority of *Brice v. Bannister*,⁽¹⁾ in acting on that view notwithstanding the decision in *Ex parte Shellard*.⁽²⁾ In *Ex parte Hall, In re Whiting*,⁽³⁾ the principle of the decision in *Brice v. Bannister*, on which *Buck v. Robson*⁽⁴⁾ proceeded, was approved.

In the reference before us now the letter containing the *havala* was addressed by Gau Halia to the Panjrapol authorities because Rs. 22 were due to him from the latter for grass sold. That amount was therefore due to him under an ordinary contract for the price of his goods. He directed the Panjrapol authorities to pay that price to his creditor, so that the letter operated as an assignment of the debt to the latter. It was a transfer of property by Gau Halia to his creditor in consideration of a debt due to the latter (see section 24 of the Stamp Act, II of 1899). The letter falls, therefore, within the definition of 'conveyance' in that Act and must be stamped as such. The amount or value of the consideration for the assignment is not set forth in the letter. Article 23 of schedule I to the Stamp Act does not, therefore, apply, but under section 24 of the Act, "where any property is transferred to any person in consideration, wholly or in part, of any debt due to him," such debt is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty. The amount or value of the consideration for the *havala* would be the amount or value of the debt, wholly or in part, as the case may be, due from Gau Halia to his creditor to whom he assigned the debt due from the Panjrapol authorities.

(1) (1878) 3 Q. B. D. 569.

(2) (1873) L. R. 17 Eq. 109.

(3) (1873) 10 Ch. D. 615.

(4) (1878) 3 Q. B. D. 636.

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As to the second question, the reference is made to us not only under the Stamp Act but also under the Court Fees Act. There is no provision of law empowering the Subordinate Judge to make a reference to this Court or giving us jurisdiction to answer it under the Court Fees Act. I would, therefore, decline to answer the second question so far as it relates to that Act. So far as it is a reference under the Stamp Act, the decision in *Kastur v. Fakiria* ⁽¹⁾ is clear. It was held there that "copies furnished under section 141-A do not come within article 24 of schedule I of the Stamp Act, 1899."

BATTY, J. :—I entirely concur.

ASTON, J. :—I concur.

(1) (1902) 26 Bom. 522.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Batty.

1902.

December 2.

RAJMAL MOTIRAM AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *
v. SHIVAJI ANANDRAV (ORIGINAL PLAINTIFF), RESPONDENT.*

Mortgage—Subsequent money bonds—Provision as to the payment of the bonds before redemption—Clogging the equity of redemption—Once a mortgage always a mortgage, and nothing but a mortgage.

In the year 1869 the plaintiff's deceased father mortgaged his lands with possession to the defendants' deceased father under two mortgage-deeds, and in the year 1882 the plaintiff passed two money bonds to the defendants' deceased father, which contained a clause providing that the amount due on the mortgages should not be paid in redemption of the property unless that which was due on the money bonds was also paid.

The plaintiff having filed a suit to redeem the lands, the defendants objected to the redemption under the above clause.

PER CURIAM.—Following *Noakes & Company, Limited, v. Rice*, ⁽¹⁾—a clause which has the effect of clogging the equity of redemption is void. *Hari Mahadaji v. Balambhat* ⁽²⁾ doubted.

SECOND appeal from the decision of Ráo Bahádur A. G. Bhavé, First Class Subordinate Judge of Sholápur, with Appellate

* Second Appeal No. 183 of 1902.

(1) L. R. (1902) A. C. 24.

(2) (1884) 9 Bom. 233.