

## APPELLATE CIVIL—FULL BENCH.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt, and Mr. Justice Parker.*

1887.  
July 29.

REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46  
OF THE INDIAN STAMP ACT, 1879.\*

*Stamp Act. s. 2 (13)—Specified property—Sch. I, art. 25—Declaration of trust—Sch. I, art. 5 (c)—Agreement.*

An agreement was made between certain persons to transfer the future surplus profits of their respective trades to a trustee, in order that the trustee should hold the fund so to be created on certain trusts declared in the agreement :

*Held* that the agreement was liable to stamp duty as a declaration of trust under the Indian Stamp Act, 1879, sch. I, art. 25, and as an agreement under art. 5 (c) :

*Held*, also, that the fund intended to be created under the agreement was not "specified property" within the meaning of s. 2 (13) of the said Act.

CASE referred to the High Court by the Board of Revenue under s. 46 of the Indian Stamp Act, 1879.

On 5th February 1887, this case was referred to the Board of Revenue by the Collector of Madras under s. 45 of the Stamp Act and stated in the following letter :—

"I have the honor to request that the Board of Revenue will be so good as to favor me with their decision as to the amount of stamp duty chargeable on the enclosed document (styled "memorandum of agreement"), presented by Messrs. Dymes and Co. for my adjudication under s. 30.

"The agreement has been made among certain cotton press companies, who mutually agree, among other conditions, to make over certain surplus receipts from their respective presses to a trustee, nominated under the deed, in view to such trustee holding the accumulations of such receipts from time to time until they amount to, at least, Rs. 50,000—after deducting certain expenses—as security for the 'due maintenance and observance of the conditions of the agreement.'

"I feel a doubt as to whether the instrument should be treated as an 'agreement not otherwise provided for by the Act,' so as to be chargeable with a duty of annas 8 under art. 5 (c), sch. I,

\* Referred Case No. 2 of 1887.

or as a mortgage under art. 44 (a) of the same schedule with reference to Board's Proceedings, No. 371, dated 4th February, 1884. I am, however, inclined to view it as falling under the latter head 'Mortgage' (*vide* cl. 13, s. 3, and art. 44 (a), sch. I), inasmuch as it stipulates for certain monies made over from time to time to the trustee by the parties to the deed, being formed into a fund to be held by him as security for performance of the conditions of the engagement entered into. If the Board agree with me in this view, then the question arises as to what amount should be taken as the consideration for the mortgage for the purposes of calculating stamp duty. Although the amount, existing at the time of execution of the document, and over which a right is created thereby at that time in favor of the trustee for the performance of the engagement (*vide* cl. 13, s. 3), is almost nothing, and will not be so much as Rs. 50,000 for some time hereafter, still, as the document is intended to cover at least that sum ultimately as the amount of security, provided the combination continues till the accumulations reach that figure and does not cease meanwhile owing to the arising of a contingency specified, I would take that sum (Rs. 50,000) as the consideration money, and levy the stamp duty accordingly under art. 21, sch. I."

REFERENCE  
UNDER STAMP  
ACT, s. 46.

The Board's resolution on the letter was as follows:—

"The Collector of Madras forwards a certain document to the Board of Revenue under s. 45 of the Stamp Act, and asks

"(i) under what article of sch. I of that Act it should be stamped; and

"(ii) if at an *ad valorem* rate, on what amount.

"The Board themselves are not unanimous in the matter, and, under s. 46, they beg, therefore, to refer the Collector's questions to the High Court for an authoritative answer.

"The document evidences an agreement which certain cotton press companies at Tinnevely have made with each other to prevent under-bidding and competition. Its main condition is that all the profits, which each individual member may make, are to be shared in fixed and rigid proportions by all; but, incidentally, a proviso has been inserted that, before any distribution of profits at all is permitted, a sum of Rs. 50,000 shall accumulate in the hands of trustees to be held as security for the due maintenance and observance of this agreement."

REFERENCE  
UNDER STAMP  
ACT, s. 46.

The Acting Government Pleader (Mr. *Powell*) for the Board of Revenue.

The judgment of the Full Bench (Collins, C.J., Kernan, Muttusámi Ayyar, Brandt, and Parker, JJ.) was delivered by

COLLINS, C.J.—We are of opinion that the instrument in question is a declaration of trust and an agreement not otherwise provided for, and that the intended fund, indicated as security, is in this case not specified property within the meaning of s. 2, cl. (13).

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Muttusámi Ayyar.*

1887.  
Oct. 21.

VENKATARATNAM AND OTHERS (DEFENDANTS), APPELLANTS,

and

KAMAYYA (PLAINTIFF), RESPONDENT.\*

*Limitation Act, s. 20—Payment of interest—Prescribed period—Extension of period.*

The words "prescribed period," used in s. 20 of the Limitation Act, 1877, mean the period prescribed by the Act.

The contention that only one extension of the period of limitation is given by payment of interest is unfounded.

APPEAL from the decree of J. Thomsen, Acting District Judge of Ganjam, reversing the decree of M. Visvanatha Ayyar, Acting District Múnsif of Berhampore, in suit No. 128 of 1886.

Plaintiff sued to recover Rs. 1,169-2-8, the balance due on an unregistered bond, dated 14th March 1879, payable on the 26th March 1880.

The Múnsif dismissed the suit on the ground that, although the suit was instituted within three years from the date of the last payment of interest, such payment was not made within the prescribed period, *i.e.*, three years from 26th March 1880.

On appeal, the District Judge remanded the suit, holding that as each payment of interest had been made within three years of the last preceding it, the suit was not barred.

Defendants appealed.

\* Appeal against Order No. 103 of 1887.