

patta in the plaintiff's name, on which a certain sum was annually payable to the mittadars; the plaintiff, it was alleged, paid the whole of this sum for one year on 29th August 1885, and he now sued for contribution.

The District Munsif held the suit was barred by limitation and dismissed the suit. The Subordinate Judge on appeal reversed the decree and remanded the suit, holding, on the authority of *Seshayiri v. Pichu*(1), that the payment constituted a charge and the period of time applicable was twelve years in the Limitation Act, sched. II, art. 132.

The defendants preferred this appeal.

Mr. Norton for appellants.

Sivasami Ayyar for respondent.

JUDGMENT.—The case quoted by the Subordinate Judge was under the Revenue Recovery Act, not under Act VIII of 1865.

The suit, however, is not for rent, but for contribution on account of a payment made by plaintiff in defendants' interest. There is no provision of law making such a claim a charge upon immoveable property. Article 99 of the Limitation Act applies.

The decree of the Subordinate Judge must be reversed and that of the District Munsif restored. The appellants are entitled to their costs in this and in the Lower Appellate Court.

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## APPELLATE CIVIL—FULL BENCH.

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

REFERENCE UNDER STAMP ACT, s. 50.\*

1891.  
October 13.

*Stamp Act—Act I of 1879, sched. I, art. 54—Release—One-anna adhesive stamp—Full stamp-duty leviable.*

A release chargeable with four-annas stamp-duty was executed on paper bearing a one-anna adhesive receipt stamp:

*Held*, that in calculating the stamp due the one-anna stamp ought not to be taken into consideration

*Semle*: A Collector is entitled under Stamp Act, 1879, s. 50, to refer to the

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(1) I.L.R., 11 Mad., 452.

\* Referred Case No. 4 of 1891.

REFERENCE High Court the decision of a Provincial Small Cause Court admitting in evidence an insufficiently stamped instrument on payment of duty and a penalty.  
 UNDER STAMP Act, s. 50.

CASE referred under Act I of 1879, s. 50, by V. A. Brodie, Acting Collector of South Canara.

The case was stated as follows :—

“ A document on plain paper purporting to be a release in respect of Rs. 28, and stamped with a one-anna adhesive receipt stamp, was produced in Small Cause suit No. 28 of 1889 on the file of the District Munsif of Karkal. Impounding the deed under section 33 of Stamp Act, the Munsif admitted it in evidence under section 34 after levying thereon annas 3 as stamp duty and Rs. 5 as penalty.

“ The amount for which the release was granted (viz. Rs. 28) required a stamp of annas 4 under article 54 (a) and 13 of schedule I; and in levying only annas 3 on account of duty the Munsif appears to have taken into account the one-anna adhesive stamp which the instrument bore.

“ As, however, the action of the Munsif in making allowance for the one-anna adhesive stamp was opposed to the ruling of the High Court in *Reference under Stamp Act, s. 46(1)*, the matter was brought to the notice of the District Judge. That officer, while concurring in my opinion that the document ought to have been treated as unstamped, declined to interfere on the ground of want of jurisdiction, the Munsif's order admitting the deed in evidence having been passed by him when sitting as a Small Cause Court, from which no appeal lies to the District Court, and references are to be made to the High Court, and section 49 of the Stamp Act and section 617 of the Code of Civil Procedure being inapplicable to the case.

“ The case was then reported to the Board of Revenue, which has held that, though under section 27 of the Provincial Small Cause Courts' Act IX of 1887, a decree or order made by a Court of Small Causes is final, the High Court having, under section 25, power to call for the record of any case and to pass such orders as it thinks fit, would be the Court to which references would be made by the Provincial Small Cause Courts, and that applications may be made to it under section 50 of the Stamp Act.”

Counsel were not instructed.

JUDGMENT.—Following the decision in *Reference under Stamp Act*, s. 46(1), we hold that in calculating the stamp due on the document, which is a release, the one-anna adhesive stamp ought not to have been taken into account.

REFERENCE  
UNDER STAMP  
ACT, s. 50.

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## APPELLATE CIVIL.

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

AMMAYEE (DEFENDANT), APPELLANT,

*v.*

YALUMALAI AND ANOTHER (PLAINTIFFS), RESPONDENTS.\*

1891.  
December 1.  
1892.  
January 4.  
February 23.

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*Succession Act—Act X of 1865, s. 50, cl. 3—Attestation—Initials of witness.*

*Semle*:—If the attesting witnesses affix their initials at the time of witnessing the execution of a will, it is a sufficient compliance with the terms of s. 50 of the Indian Succession Act.

APPEAL against the judgment of WILKINSON, J., sitting on the Original Side of the High Court in testamentary suit No. 2 of 1890.

In this case two persons, as executors appointed by the will of Cunneappa Chetty deceased, propounded and sought probate of a testamentary instrument signed by the deceased and attested by three witnesses, of whom only one signed his name in full and the others only wrote the initial letters of their names.

The question was raised whether the instrument propounded was duly attested with reference to the provisions of Indian Succession Act, s. 50, cl. 3, and, upon this question, the judgment was as follows:—

WILKINSON, J.—The preliminary question for determination in this case is whether the attesting witnesses signed the will. There were three attesting witnesses to the will, only one of whom has signed his name in full, the other two witnesses having merely affixed the initials of their names. The question is whether they have complied with the requirements of clause 3, section 50 of the