Having done this, plaintiffs must go on to show what is the difference, if any, to be accounted for by the defendants.

The account must be filed in this Court within two months. Two weeks allowed to the defendants to take objection. Parties to have access to the books.

This appeal coming on for hearing after the submission of the accounts, &c., the Court delivered the following judgment:—

JUDGMENT.—Nothing in the shape of an intelligible account is put before us. The plaintiffs, therefore, not having taken advantage of the opportunity given them, we must accept the finding so far as regards the matter of the first issue. The decree must be modified in accordance with the finding of the Subordinate Judge in paragraph 29. Subject to this, the appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Davies.

VENKATRAMAYYA AND OTHERS (DEFENDANTS), APPELLANTS,

v.

KRISHNAYYA (PLAINTIFF), RESPONDENT.*

1897. August 6, 25.

Court Fees Act—Act VII of 1870, ss. 6, 28—Civil Procedure Code—Act XIV of 1882, s. 54—Presentation of plaint improperly stamped.

A suit is not instituted, within the meaning of the explanation to s. 4 of the Limitation Act, by the presentation of a document purporting to be a plaint, if that document, while not undervaluing the claim, is written on paper that does not bear the proper Court fee.

SECOND APPEAL against the decree of F. H. Hamnett, District Judge of Kistna, in Appeal Suit No. 279 of 1894, reversing the decree of N. Somayajulu Sastri, District Munsif of Gudivada, in Original Suit No. 114 of 1893.

Suit to recover Rs. 205-7-3, the principal and interest due on a registered mortgage bond. The cause of action accrued on the 29th March 1881, and the plaint was filed on the 29th March 1893. The proper Court fee was Rs. 15-12-0, but the plaint was stamped with a stamp of As. 12. On the 30th March the plaint was returned to be represented with the proper stamp

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* Second Appeal No. 1360 of 1896.

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within seven days and was represented within the time allowed. No explanation appears to have been given at any stage of the suit why the plaint was stamped with only a 12-anna stamp.

One of the issues raised in the suit was "whether the suit is "barred, the plaint not having been properly stamped on 29th "March 1893."

The District Munsif held that the suit was barred and dismissed the plaintiff's claim, but the District Judge on appeal reversed the Munsif's decree and gave a decree for a portion of the plaintiff's claim.

The defendants appealed.

Sriramulu Sastri for appellants.

Venkatarama Sarma for respondent.

SHEPHARD, J.—The question is whether the plaint, having been presented with an insufficient Court-fee stamp on the last day allowed by the law of limitation, viz., the 29th March 1893, and subsequently within the time fixed by the Court presented again with a proper stamp, can be said to have been duly presented within the time limited by the Act of Limitation. According to the 4th section of that Act, a suit is instituted when the plaint is presented to the proper officer, and unless the suit is so instituted within the period prescribed by the schedule, it must be dismissed. This suit, therefore, ought to have been dismissed, if, in point of law, there was no plaint presented on the 29th March 1893. The document presented as a plaint satisfied the requirements of the Civil Procedure Code, but it did not satisfy the requirements of the Court Fees Act, inasmuch as the stamp affixed was 12 annas when it ought to have been Rs. 15-12-0. That being the case, it was a document which, in view of the provisions of section 6 of the Court Fees Act, could not lawfully have been filed by the Court to which it was presented. Moreover, it was a document which, according to the 28th section of the same Act, possessed no validity. The Act not only imposes a restriction or disability on the Court with reference to an inadequately stamped document. It also, by declaring the invalidity of such document, makes the proper stamping of a document purporting to be a plaint an essential condition of the existence of a valid plaint. In other words, a plaint inadequately stamped is, in point of law, no plaint at all. I can find nothing in section 54 of the Civil Procedure Code to conflict with this view of the law. We are not concerned with the case of improper valuation, the case contemplated in

clause (*a*) of section 54 of the Civil Procedure Code and sections 9 and 10 of the Court Fees Act. Nor are we concerned with the case of mistake or inadvertence on the part of the Court—the case to which the proviso to section 28 of the latter Act is applicable. The case before us is the one provided for in clause (*b*) of section 54 of the Civil Procedure Code. The object of that clause is to give the party who has presented a defectively stamped plaint an opportunity of supplying the defect. Instead of rejecting the plaint the Court must fix a time for the supply of the requisite stamp paper. But for this saving provision, a fresh plaint would have been indispensable, as it is, if the requisite stamp paper is not supplied within the time fixed. It appears to me that this provision of the law is in no manner inconsistent with the construction which I place upon the Court Fees Act. Because the law makes that provision in favour of the party whose plaint is defective in the matter of stamp, I cannot see why it should be said that the law empowers the Court to enlarge the period allowed by the Limitation Act, or gives retrospective validity to a document which, at the time when it was first presented, was invalid. Seeing that the Legislature had before them the proviso to the 28th section of the Court Fees Act, which declares in favour of retrospective validity in the case therein provided for, it is not to be supposed that, in framing section 54 of the Code, they intended that principle to be extended to cases not within the proviso. A still stronger argument of a similar character is furnished by section 582-A of the Civil Procedure Code. That section which became law on the 29th July 1892 refers, like the second paragraph of section 5 of the Limitation Act, to appeals and applications for review of judgment. The section provides for the case of an insufficiency of stamp "caused by a mistake on "the part of the appellant as to the amount of the requisite "stamp." It declares that, notwithstanding the insufficiency, the memorandum of appeal "shall have the same effect and be as "valid as if it had been properly stamped." This section probably owes its origin to the decision of the Full Bench in *Bulkaran Rai v. Gobind Nath Tiwari*(1). It was there held that the practice of giving an appellant time to supply a deficiency of Court-fee stamp and treating the memorandum of appeal as validly presented on the day when it was presented with the defective stamp, was

(1) I.L.R., 12 All., 129.

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erroneous. This practice was one which generally prevailed in this and other Courts, and the effect of the new section was to legalize it, subject, however, to the condition that the deficiency of stamp was due to mistake on the appellant's part. In the absence of any such mistake it is clear now that in the case of appeals the decision of the Allahabad Court must prevail. The appeal must be rejected unless the memorandum adequately stamped is presented within due time. Since the Legislature has, by this new section, extended a limited indulgence to appellants, it cannot be supposed that it was intended to give plaintiffs, in respect of their plaints, the same indulgence in unqualified terms. To hold in favour of the plaintiff in the present case would mean that, whereas an appellant can take advantage of section 582-A only on proving mistake, a plaintiff may deliberately and with his eyes open affix an inadequate Court-fee stamp and, on the balance being furnished within a time fixed, demand to have his plaint treated as if at institution it had been properly stamped. This cannot possibly have been the intention of the Legislature, for the section already mentioned and the latter part of section 5 of the Limitation Act shows that appellants, not plaintiffs, are regarded as parties in whose favour the rigour of the law of limitation should be relaxed.

The case of *Skinner* v. *Orde*(1) is relied upon in this as in other cases as containing a dictum of the Judicial Committee in favour of the view advocated by the respondent's Vakil. *Skinner* v. *Orde*(1) is however easily distinguishable from the present case. There the petition as originally presented by the plaintiff was complete and valid, and only required the order of the Court under section 308 of the Code then in force to make it fully efficacious as a plaint. After the filing of the petition the plaintiff acquired the means requisite for paying the Court fee, and accordingly the proper stamp was affixed. The question was whether the plaintiff was, as regards the date of the presenting of his plaint, to be placed on the footing on which he could have been, had the order abovementioned been made, or whether the plaint should have been rejected altogether. There was no question, in that case, of validating a plaint which was, in its inception, invalid. In the present case, on the contrary, that is precisely the

(1) I.L.R., 2 All., 241.

contention which must be raised, and it clearly is not admissible, because a transaction *ab initio* void cannot be validated.

I have already given reasons for holding that the plaint as presented was of no legal force or effect whatever. I agree with the decision in *Jainti Prasad* v. *Bachu Singh*(1). I reverse the decree of the District Judge and restore that of the District Munsif with costs.

DAVIES, J.—I entirely concur.

APPELLATE CIVIL.

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

RANGAMMAL (PLAINTIFF), APPELLANT,

v.

VENKATACHARI (DEFENDANT), RESPONDENT.*

1896. March 16.

Fraudulent conveyance—Collusive decree—Fraud on creditors—Fraudulent purpose carried out—Suit by legal representative of the fraudulent transferor and judgment-debtor to set aside conveyance and restrain execution of decree—Widow of Hindu transferor.

A with the intention of defeating and defrauding his creditors made and delivered a promissory note to B without consideration and collusively allowed a decree to be obtained against him on the promissory note, and conveyed to B a house in part satisfaction of the decree: and it appeared that certain of A's creditors were consequently induced to remit parts of their claim. A having died, his widow and legal representative under Hindu Law, now sued B to have the promissory note and the conveyance set aside and to have the defendant restrained by injunction from executing the decree:

Held, (1) that the plaintiff was not entitled to relief, for A if now alive could not have claimed to have his own fraudulent acts set aside and the plaintiff was in no better position than he would have been.

Quære: Whether a widow might successfully maintain a claim for maintenance out of property alienated by her husband without consideration and fraudulently if she herself was no party to the fraud.

THIS was an appeal from the decision of Subramania Ayyar, J., reported as *Rangammal* v. *Venkatachari*(2). The facts and pleadings are fully set out in the judgment of the Court below, but for the purposes of this report may be here recapitulated.

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(1) I.L.R., 15 All., 65.

(2) I.L.R., 18 Mad., 378.

* Original Side Appeal No. 51 of 1895.