Finally, it may be pointed out that the first proviso to section 52 of the Prisons Act lays down that the District Magistrate may transfer a case for enquiry and trial to any Magistrate of the first class. We must take it, in the absence of anything to the contrary, that the term "Magistrate of the first class" has the same meaning in the proviso as in the body of the section. If therefore we interpret "Magistrate of the first class" as including a Presidency Magistrate, a District Magistrate must be held empowered to transfer cases to a Presidency Magistrate. Ordinarily a District Magistrate has power to transfer cases only to some Magistrate subordinate to him—*vide* section 192 of the Code of Criminal Procedure, and cannot therefore transfer a case to a Presidency Magistrate or to any other Magistrate outside his own districts. We think the power of transfer given by the proviso to section 52 of the Prisons Act must be read subject to the limitation imposed by the Criminal Procedure Code.

We therefore find that the Presidency Magistrate had no power to try Chota Singh. We set aside his acquittal and direct that he be discharged as the proceedings before the Presidency Magistrate were void.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arnold White, Chief Justice, Mr. Justice Miller and Mr. Justice Abdur Rahim.

GAVARANGA SAHU (PLAINTIFF), PETITIONER

v.

BOTOKRISHNA PATRO AND OTHERS (DEFENDANTS AND HIS LEGAL REPRESENTATIVES), RESPONDENTS.*

1908. November 5, 6, 25, 1909. March 9.

Limitation Act, XV of 1877, s. 4—Civil Procedure Code, Act XIV of 1882, s. 54 (b)—Plaint, though not sufficiently stamped is 'plaint' within the meaning of s. 4 of the Limitation Act—Suit not barred when plaint insufficiently stamped is presented within period of limitation, though stamp dificiency made good after such period.

When a plaint is presented on a paper insufficiently stamped within the prescribed period of limitation, and time is given by the Court under section 54 (*b*) of the Code of Civil Procedure to make good the deficiency

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* Civil Revision Petition No. 446 of 1906.

WHITE, C.J., MILLER AND ABDUR RAHIM, JJ.

GAVARANGA SAHU v. BOTOKRISHNA PATRO.

and the deficiency is supplied within the time fixed by the Court, but after the period of limitation expired, the suit is not barred by limitation.

The validity of a plaint for the purposes of section 4 of the Limitation Act is not dependent on its validity for the purposes of the Court Fees Act.

Venkatramayya v. *Krishnayya*, [(1897) I.L.R., 20 Mad., 319], dissented from.

Jainti Prasad v. *Bachu Singh*, [(1893) I.L.R., 15 All., 65], dissented from.

Dictum of Sir S. SUBRAHMANIA AYYAR in *Assan* v. *Pathumma*, [(1899), I.L.R., 22 Mad., 494], approved and followed.

PETITION, under section 25 of Act IX of 1887, praying the High Court to revise the judgment and decree of V. Runga Row, District Munsif of Berhampur, in Small Cause Suit No. 208 of 1906.

The Civil Revision Petition first came on for hearing before Miller, J., who made the following order of reference to the Full Bench :

ORDER OF REFERENCE.—In this case the plaint was presented on the last day of the limitation period. The suit was not undervalued, but the Court fee affixed to the plaint was insufficient. Time was allowed by the Court under section 54 (*b*) of the Code of Civil Procedure, and the deficiency was duly made good. The plaint was filed and the suit heard and dismissed as barred by limitation on the authority of *Venkatramayya* v. *Krishnayya*(1).

In *Surendra Kumar Basu* v. *Kunja Behary Singh*(2), a case on all fours with the present, Banerji, J., distinguishes *Venkatramayya* v. *Krishnayya*(1) on the ground that in that case the plaint was returned to be represented to the Court and was not retained in the Court. I venture with deference to doubt the reality of the distinction. It would no doubt be real if the plaint had been rejected on presentation: the document subsequently presented would then have been a new plaint: but clearly the learned Judges did not deal with the case on that footing; Shephard, J., at page 321 of the report states expressly that the case is the one provided for in section 54 (*b*) of the Civil Procedure Code; and the opening sentences of his judgment show that the plaint was not rejected. If then that case was rightly decided, I think the decision of the District Munsif in the present case must be upheld. But that case was dissented from by Sir Subrahmania Ayyar, J., in *Assan* v. *Pathumma*(3). Sir James Davies, J., who took part in both cases, distinguishes them on the ground that in the latter case

(1) (1897) I.L.R., 20 Mad., 319. (2) (1900) I.L.R., 27 Calc., 814.
(3) (1899) I.L.R., 22 Mad., 494.

there was a mistake by the Court, and adheres to the decision in the earlier case; he states that he could support that decision by additional reasons, but as he did not deem it necessary to decide the question in his view of the case, we have unfortunately to proceed without the assistance of those arguments.

On the strength of his view of the case I am asked to hold that Sir Subrahmania Ayyar's opinion was unnecessary for the decision of the case and need not be followed; but clearly that was not the view of the learned Judge himself. In his view, as he explains at page 501 of the report, "The present cases cannot be distinguished from *Venkatramayya* v. *Krishnayya*(1), cited for the appellants, and they should be held to be barred by limitation if that decision is to be followed." I think therefore I am bound to attach to his observations all the weight that is due to any opinion which he found it necessary to express in order to dispose of the case before him.

That opinion was followed in *Dhondiram* v. *Taba Savadan*(2), when Sir Lawrence Jenkins, C.J., refers to it as supported by cogent reasoning: *Venkatramayya* v. *Krishnayya*(1) was not there referred to, but I cannot suppose that it was not considered as *Assam* v. *Pathumma*(3) deals with it; at any rate Sir Lawrence Jenkins, C.J., notices section 28 of the Court Fees Act, on which the decision of Shephard, J., is largely based. This case in Bombay is on all fours with the present case, as is also *Moti Sahu* v. *Chhatri Das*(4), in which the same decision was arrived at, and the reasoning there is adopted by Sir Francis Maclean, C.J., in *Surendra Kumar Basu* v. *Kunja Behary Singh*(5). In *Yakut un Nissa Bibee* v. *Kishoree Mohun Roy*(6), the decision seems to be the other way, but Banerji, J., who took part in all three cases, distinguishes *Yakut un Nissa Bibee* v. *Kishoree Mohun Roy*(6), as dependent on the special circumstances of the case. In *Huri Mohun Chuckerbutti* v. *Naim ud din Mahomed*(7), Petheram, C.J., and Ghose, J., followed *Moti Sahu* v. *Chhatri Das*(4).

In our own Court I do not find a case on the point since *Assan* v. *Pathumma*(3), but the cases cited by Sir Subrahmania Ayyar, J., in that case, *Papamma Rao* v. *Sitaramayya*(8), as well

(1) (1897) I.L.R., 20 Mad., 319. (2) (1903) I.L.R., 27 Bom., 330.
(3) (1899) I.L.R., 22 Mad., 494. (4) (1892) I.L.R., 19 Calc., 780.
(5) (1900) I.L.R., 27 Calc., 814. (6) (1892) I.L.R., 19 Calc., 747.
(7) (1893) I.L.R., 20 Calc., 41. (8) Appeal No. 159 of 1893 (unreported).

WHITE, C.J., MILLER AND ABDUR RAHIM, JJ.

GAYABANGA SAHU v. BOTO-KRISHNA PATRO.

as *Chennappa* v. *Raghunatha*(1) and *Patcha Saheb* v. *Sub-Collector of North Arcot*(2), to all of which Parker, J., was a party, support the view which has been adopted in Bombay and Calcutta.

As regards Allahabad, the decision of the Full Bench in *Balkaran Rai* v. *Gobind Nath Tiwari*(3) was dissented from in *Chennappa* v. *Raghunatha*(1) to which I have referred, but was followed in *Jainti Prosad* v. *Bachu Singh*(4), where the two cases in *Moti Sahu* v. *Chhatri Das and Yakut un Nissa Bibee* v. *Kishoree Mohun Roy*(5) are held to be in conflict. In *Durga Singh* v. *Bisheshar Dayal*(6), Sir John Stanley, C.J., and Burkitt, J., without expressingt heir individual opinion, felt bound to follow the earlier cases, but in a later case, *Hari Ram* v. *Akbar Husain*(7), *Balkaram Rai* v. *Gobind Nath Tiwari*(3), is much criticised in the judgment of Knox, A.C.J. Though he accepted and distinguished *Jainti Prasad* v. *Bachu Singh*(4), Banerji, J., did not find it necessary to express his opinion on *Jainti Prasad* v. *Bachu Singh*(4).

The Allahabad Court still seems to hold that unless there is mistake or inadvertence on the part of the Court, the plaint cannot be validated as from its date of presentation, for none of the Judges has dissented from *Jainti Prasad* v. *Bachu Singh*(4), and Sir George Knox, A.C.J., distinguishes it on the ground that there the mistake was discovered before the plaint was registered.

The same learned judge, however, at pp. 759 and 760 of the report in *Hari Ram* v. *Akbar Husain*(7), expresses a view practically identical with that of Sir Subrahmania Ayyar, J., in *Assan* v. *Pathumma*(8) : he declines to read the Court Fees Act and the Limitation Act together, and further holds that even if that must be done, he will not be justified in reading the word 'plaint' in section 4 of the Limitation Act as meaning a plaint upon which the proper Court fee has been paid.

As regards the authorities then, support is found in all the High Courts for the view of Sir Subrahmania Ayyar, J., upon the question, and the cases in Bombay and Calcutta, except perhaps

(1) (1892) I.L.R., 15 Mad., 29
(2) (1892) I.L.R., 15 Mad., 78.
(3) (1890) I.L.R., 12 All. 129.
(4) (1893) I.L.R., 15 All., 65.
(5) (1892) I.L.R., 19 Calc., 780 and 747.
(6) (1902) I.L.R., 24 All., 220.
(7) (1907) I.L.R., 29 All., 749.
(8) (1899) I.L.R., 22 Mad., 494.

Surendra Kumar Basu v. *Kunja Behary Singh*(1) which seems to proceed to some extent on the second paragraph of section 28 of the Court Fees Act, go as far as he would go.

The whole question seems to depend on the meaning to be attributed to the word "plaint" in section 4 of the Limitation Act; if the insufficiently stamped plaint is a plaint within the meaning of that section, it follows that whether the insufficiency is due to mistake or not, the document when presented will be useful to save the bar of limitation. Of course, if every insufficiently stamped plaint received by an officer of the Court is to be presumed to have been received by mistake or inadvertence, the question will not arise: the second paragraph of section 28 of the Court Fees Act will validate the document as from the date of its presentation, but the remarks of Sir George Knox, A.C.J., and Banerji, J., on this subject (*Hari Ram* v. *Akbar Husain*(2)), seem to confine the presumption to plaints which have been admitted and registered, and I do not see how it is to be properly extended to cases in which the officer of the Court has merely taken the document from the hand of the person presenting it, and put it on one side for further examination before admission.

And this is what frequently, perhaps usually, happens. The officer of the Court has not time to scrutinize each plaint as soon as it is presented; he takes it and as soon as he has time examines it, and if it is insufficiently stamped he does not at once reject it under section 54 of the Code of Civil Procedure (*Hari Ram* v. *Akbar Husain*(2)); but applies section 54 (*b*) and fixes a time for making good the deficiency. This course is clearly warranted by the section; but it can hardly be said that taking without examination is taking by inadvertence or mistake.

In such cases, and the present is, I think, one of them, the question which I have propounded does require an answer, and I agree with Sir Subrahmania Ayyar, J., that the validity of the plaint for the purposes of section 4 of the Limitation Act is not dependent on its validity for the purposes of the Court Fees Act.

It seems to me that a document purporting to be a plaint and drawn up substantially in accordance with the provisions of sections 48 to 52, Code of Civil Procedure, is a plaint, whether it is

(1) (1909) I.L.R., 27 Calc., 814.

(2) (1907) I.L.R., 29 All., 749 at pp. 762 and 767.

WHITE, C.J., MILLER AND ABDUR RAHIM, JJ.

GAVARANGA SAHU v. BOTOKRISHNA PATRO.

stamped or not. It is clear that it does not cease to be a plaint; because it is not drawn up exactly in accordance with those provisions, *vide* section 53 (*b*) (i) and (ii): it is a plaint, but an imperfect plaint. So it seems to me, if it is not sufficiently stamped, it is a plaints but an imperfect plaint. So far as civil suits are concerned, the plaint of the Limitation Act and the Court Fees Act must be the plaint prescribed by the Code of Civil Procedure for the institution of a suit. There is nothing else that it can mean. Then the plaint, imperfect by reason of being insufficiently stamped, has no validity by virtue of section 28 of the Court Fees Act for the purposes of that Act. Now, as was observed by Mahmood, J., in *Balkaran Rai* v. *Gobind Nath Tiwari*(1), the Court Fees Act has no preamble whereby its purposes can be ascertained, but I do not think it can be suggested that one of its purposes was to supplement the provisions of the Limitation Act. One of its main purposes, no doubt, is to levy fees for services to be rendered by Courts and public officers, and the plaint is not to be effectual for such purposes until it is duly stamped. The Court will not be empowered to issue process for the defendant, or to try the suit or grant relief to the plaintiff, but, if it does any of these things by mistake or inadvertence, its proceedings can be validated by payment of the required fees in the way prescribed by law. To hold with Shephard, J., that an insufficiently stamped plaint being *ab initio* void cannot be validated seems to me, with great deference, to be running counter to section 28 of the Court Fees Act and to section 54 (*b*) of the Code of Civil Procedure. In neither case, as I read these sections, can it be held that the plaint when the deficiency is supplied is a new plaint.

In my opinion sufficient extent is given to the word "validity" in section 28 if it is confined to the purposes of the Act in which it is found, and I therefore agree with Sir Subrahmania Ayyar, J., and the observation of Sir George Knox, A.C.J., to which I have referred.

I do not overlook the danger adverted to in *Jainti Prasad* v. *Lachu Singh*(2), where the observations of the learned judges at pages 73 and 74 of the report conjure up a picture of a District Munsif's Head Clerk dispensing to belated and impecunious plaintiffs what would amount to extension of limitation periods

(1) (1890) I.L.R., 12 All., 129. (2) (1893) I.L.R., 15 All., 65.

up to one, ten or twenty years; but I cannot but think that had the framers of the Code of Civil Procedure had this danger in mind they would have provided against it expressly in the Code, and I cannot therefore accept the existence of the danger as evidence of any value in favour of the view of the law taken in *Venkatramayya* v. *Krishnayya*(1). I do not say that the danger is unreal, but it can be minimized, if not extinguished, in various ways, one of which would be by fixing a maximum period of time under section 54 (*b*) of the Code of Civil Procedure or rather hereafter under Order VII, rule 11, of the new Code of Civil Procedure; and after all, if the officer of the Court is disposed to misconduct, it is not difficult to admit an insufficiently stamped plaint by an alleged mistake or inadvertence and file it, in which case the plaintiff also obtains in effect an extension of the limitation period within which to present a fully stamped plaint.

As I am unable to distinguish *Venkatramayya* v. *Krishnayya*(1) on the ground suggested by Banerji, J., *Surendra Kumar Basu* v. *Kunja Behary Singh*(2), and as opinions in this Court are, as I have shown, conflicting, I will ask the Chief Justice to refer to a Full Bench the question.

"When a plaint is presented on a paper insufficiently stamped, "within the prescribed period of limitation, and time is given by "the Court under section 54 (*b*) of the Code of Civil Procedure to "make good the deficiency, is the suit barred by limitation, if the "deficiency is supplied within the time fixed by the Court, but after "the limitation period has expired?"

The case again came on for hearing in due course before the Full Bench constituted as above, when the Court expressed the following opinion:—

T. V. Narayaniah for petitioner.

S. Ranganadha Ayyar for second and third respondents.

OPINION.—We agree with the view taken in the order of reference and with the reasons upon which it is based. Section 149 of the Code of Civil Procedure, 1908, is in accordance with this view.

We answer the question which has been referred to us in the negative.

(1) (1897) I.L.R., 20 Mad., 319. (2) (1900) I.L.R., 27 Calc., 814.