THE BRITISH INDIA STEAM NAVIGATION COMPANY *v.* SHARAFALLY. — VENKATA-SUBBA RAO, J.

notification seems to have provided only for "urgent" work during the vacation and it was held that the filing of a plaint or the filing of an appeal could not be considered as work of an urgent nature.

Rani Venkata Ramania v. *Kherode Mull*(1) and *Maharaja Ravaneswar Prasad Singh* v. *Baij Nath Ram Goenka* (2), afford us no assistance whatsoever, because the terms of the notification have not been set out in the reports of the cases.

There remains another objection to be dealt with. It has been argued that applications for new trial are not explicitly mentioned in clause 5. But the words "other papers" are comprehensive enough, although a more apt expression might have been used. It is not denied that clause 5 was always treated as applicable also to applications for new trial. I am of the opinion that this contention also must fail.

N.R.

APPELLATE CIVIL.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, and Mr. Justice Ramesam.

1923, April, 23.

SURJIMULL MURLIDHAR CHANDICK (PLAINTIFF) APPELLANT,

v.

ANANTA LAL DAMANI AND ANOTHER (DEFENDANT), RESPONDENTS.*

Stamp Act (II of 1899), sch. I, art. 1—Acknowledgment, meaning of—Statement of account—Dominant intent to supply evidence of debt—Necessity for stamp—Creditor calling for account from debtor—Statement of account by debtor—Credit and debit entries, with a balance item signed

(1) (1909) 10 C.L.J., 118. (2) (1909) 10 C.L.J., 120.

* Original Side Appeal No. 53 of 1922.

by debtor—Document sent by debtor to creditor, whether an acknowledgment—Document, unstamped, whether admissible in evidence—Construction of document—Evidence of surrounding circumstances.

A document is not an acknowledgment within the terms of article 1, schedule I of the Stamp Act, unless it is given with the dominant intent to supply evidence of the debt.

The Court has to apply its mind to the question—looking at the document and the surrounding circumstances—what was the intention with which it was given.

Where a document contains entries from which it is right to deduce that the intention was to arrive at a *statement of account* or put on record payments on either side of the account, it cannot be inferred from the sending of the document by the debtor to the creditor, although it contains a balancing item at the end and is signed by the debtor, that the intention was to supply evidence of the debt to the creditor; such a document, though unstamped, is admissible in evidence.

Brojender Coomar v. *Bromomoye Chowdhrani* (1879) I.L.R., 4 Calc., 885; *Brojo Gobind Shaha* v. *Goluck Chunder Shaha* (1883) I.L.R., 9 Calc., 127; *Nund Kumar Shaha* v. *Shurnomoyi* (1888) I.L.R., 15 Calc., 162; and *Ambica Dat Vyas* v. *Nityanund Singh* (1903) I.L.R., 30 Calc., 687, followed; *Sitaram* v. *Ramprosad* (1914) 19 C.L.J., 87; and *Mulji Lala* v. *Lingu Makaji* (1897) I.L.R., 21 Bom., 201 (F.B.), distinguished; *Ramaswami Aiyar* v. *Gnanamani Nachiar* (1916) 31 M.L.J., 851, dissented from.

APPEAL from the judgment of Mr. Justice PHILLIPS passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 824 of 1920.

The plaintiff sued to recover a sum of money due to him from the defendants on dealings between the first defendant and the plaintiff since 1911 and prior thereto between him and his alleged adoptive father and mother. The plaint referred to a roka or varthamanam letter, written by the first defendant and dated 15th November 1917 to save limitation for the suit which was instituted

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on the 8th November 1920. Paragraph 6 of the plaint referred to the roka in the following terms :—

"By a Marwadi Roka or Vartamanam, letter, written and acknowledged by the first defendant herein, dated 15th November 1917, there is due to the plaintiff a sum of Rs. 4,397-12-3, only by the first defendant for principal carrying compound interest at 12 per cent per annum, in respect of dealings which the first defendant had with the plaintiff herein."

The 1st defendant pleaded, inter alia, that the suit was barred by limitation, and denied his signature to the roka, but at the time of the hearing in the trial Court admitted his signature and stated that the document was inadmissible in evidence, as it was not stamped under schedule I, article 1 of the Stamp Act.

By a letter written by the first defendant to the plaintiff, it appeared that the latter had sent for account from the former, who wrote the following letter (Exhibit B) :—

". . . You sent for accounts—That is all right. We have taken down a statement of account and already given the same to Ammaji. You may have received the same. Again after our coming to Sri Madras we would prepare a statement of account with particulars and give to you. Please to know of it . . ."

The roka was sent to the plaintiff by the 1st defendant in pursuance of that letter. The learned Trial Judge held that the roka referred to in the plaint was an acknowledgment, that it was inadmissible in evidence as it was not stamped, and that the suit was in consequence barred by limitation, and dismissed the suit. The plaintiff preferred this appeal.

T. R. Ramachandra Ayyar and *K. V. Sesha Ayyangar* for appellant.

T. R. Venkatarama Sastri, *K. Jagannadha Ayyar* and *R. Purushothama Ayyangar* for second respondent.

R. N. Ainger for first respondent.

The JUDGMENT of the Court was delivered by

SCHWABE, C.J.—This is an appeal from a decision of PHILLIPS, J., deciding a case on the ground that a document acknowledging a debt was not admissible in evidence. The document is called a *roka*. It shows credit entries and the balance due at the last account and interest thereon up to date, and debit entries of the amount paid off and a balancing item of Rs. 4,397–12–3 and then the words "balance payable up to Kartik sudh first of samvat 1974 (that is, 15th November 1917) Rs. 4,397–12–3" and the signature of the defendant. The circumstances under which that document came into existence are clear from the correspondence, and I do not think that any evidence could be adduced which would give the Court any further assistance than is obtained from the correspondence. A letter, Exhibit B, was produced from the defendant stating that he had taken down the statement of account which had been sent for and given it to Ammajee, the plaintiff's mother, and promising on coming to Madras that he would prepare a fresh statement of account and give it to the plaintiff. When he came to Madras, in pursuance of that promise the roka was sent. The question is whether or not that is an acknowledgment within the definition of "acknowledgment" in the Stamp Act, for if it is, it has to be stamped, and if not stamped, it cannot be admitted in evidence, and in such a case the legislature has thought fit to impose what to my mind is an appalling penalty of the plaintiff losing his claim altogether; because there is no penalty provided, by the payment of which to Government, the document can be admitted. Perhaps in view of the seriousness of this provision, the draftsman of the schedule has so worded it that it has left many loopholes, and has given rise to a conflict of judicial opinion when it comes to interpretation. The words are

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"Acknowledgment of a debt exceeding Rs. 20 in amount or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt."

The first question that arises is whether any particular document is given to supply evidence of the debt. It is quite clear to my mind on the authorities that the question is whether it is given with the dominant intent to supply evidence of the debt and it has been held that where the document contains other entries from which it is right to deduce that the intention is to arrive at a statement of account or to put on record payments on either side, the intention to be inferred from the sending of the document, although it contains a balancing item at the end, is not to supply evidence to the creditor. *Brojender Coomar* v. *Bromomoye Chowdhrani*(1), *Brojo Gobind Shaha* v. *Goluck Chander Shaha*(2), *Nund Kumar Shaha* v. *Shurnomoyi*(3), and *Ambica Dat Vyas* v. *Nityanund Singh*(4) are all instances of this. Cases quoted to the contrary are *Sitaram* v. *Ramprosad*(5) and *Mulji Lala* v. *Lingu Makaji*(6). In those two cases there was something quite different from the other cases and from this case. There, there was nothing but an acknowledgment of debt. In both those cases the words amounted to giving the figure and the statement was that account having been taken the balance due was so much, and I can understand the view in those cases that there was merely sending an acknowledgment of the debt for giving the other party an acknowledgment for use in evidence. The matter also came before this Court in *Ramaswami Aiyar* v. *Gnanamani Nachiar*(7). There, there was a somewhat complicated document containing a statement of the balance

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(1) (1879) I.L.R., 4 Calc., 885.
(2) (1883) I.L.R., 9 Calc., 127.
(3) (1888) I.L.R., 15 Calc., 162
(4) (1903) I.L.R., 30 Calc., 687.
(5) (1914) 19 C. L.J., 87.
(6) (1897) I.L.R., 21 Bom., 201 (F.B.).
(7) (1916) 31 M.L.J., 851.

due by a zamindar to his agent and an acknowledgment by the zamindar that he had examined the account and found it correct, and releasing the agent from all claims against him. It was held by ABDUR RAHIM, Offg. C.J., first that that was an acknowledgment within the meaning of the Stamp Act and secondly that it was a release, and being a release, it could not be looked upon as a document which was inadmissible, though looked upon as an acknowledgment it would be inadmissible. With that part of the judgment PHILLIPS, J., did not agree, because he did not think that it amounted to a release. He did, however, think that it amounted to an acknowledgment, but said that it did not matter in that case, because whether the document was admitted or not it did not affect the merits of the case. It follows that this point in that case was not necessary for the decision. It seems to be in direct conflict with some of the cases in Calcutta quoted above, and speaking for myself, so far as it relates to acknowledgment I do not agree with it. That being the state of the authorities, the Court has to apply its mind to the question—looking at the document and the surrounding circumstances—what was the intention with which that document was given; was that meant to be a bare acknowledgment and a promise to pay to be used in evidence against the sender, or was it sent for some other dominant purpose? In my judgment, the answer must be that it was given with the intention that it was to be a statement of account as between the parties containing entries of payments by the defendant as well as a statement of debits due from him, and also a statement of the calculation of interest, and the rate of interest which the defendant admitted that he was under a liability to pay. In these circumstances, in my judgment, the document is not an acknowledgment and ought to have been admitted.

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The question is also raised whether or not it comes within the other exceptions in the article in that it contains a promise to pay the debt and stipulation to pay interest. These two questions seem to be difficult and interesting; but in the view I take of the first point it is not necessary to consider them. In my opinion this judgment is wrong and must be set aside.

It is suggested that we should direct a new trial on this issue of limitation. If I were satisfied that there would be anything to gain by such a course, I should order a new trial. But in this case I am not so satisfied, and I am clear that any evidence of intention given at this stage could not be of the least assistance to the Court. I think one has in the letter referred to and in the document itself so much to show that it is not a mere acknowledgment given with the intention of supplying evidence of the debt to the other side, that any amount of verbal evidence adduced would not affect the proper interpretation of the document.

This appeal must be allowed and the case must go back to the Original Side for disposal on issues 2, 4 and 5 and the additional issues if the Court thinks it necessary.

The costs of this appeal must be paid by the respondents and the costs of the first trial save in so far as the first defendant has been deprived of them will abide the result of the second. The court-fee paid on the appeal memorandum will be refunded to the appellant on application. The memorandum of objection is dismissed.

Grant & Greatorex, Solicitors for first respondent.

K.R.