

## FULL BENCH.

1913  
November, 7.

Before Justice Sir George Knox, Justice Sir Pramada Charan Banerji and  
Mr. Justice Tudball.

MUTASADDI LAL (PETITIONER) v. HARKESH AND OTHERS (OPPOSITE PARTIES). \*

Act No. II of 1899 (*Indian Stamp Act*), section 2 (14); schedule I, article 5—  
“Instrument”—Entry in register as to terms of hiring certain machinery  
attested by thumb marks of hirers—Memorandum of agreement—Stamp.

In a book kept by the owner of certain machinery for the manufacture of sugar which purported to be a register of sums payable with respect to the letting out of woodey machines (*charichhi*) and rollers for pressing sugarcane and iron pans for boiling sugarcane juice was an entry to the following effect.—“Harkesh, son of Kunwar, and two others, residents of mauza Salempur, hired a sugarcane pressing machine in consideration of a rent of Rs. 15, from the plaintiff through his *karinda* (named), that they would pay the hire in *Chait*, and in default would pay interest at 2 per cent. per mensem.” Below this entry were the thumb marks of the persons who hired the machine.

Held that this entry amounted to an “instrument” as defined in section 2, sub-section (14) of the Indian Stamp Act, 1899, and was a memorandum of agreement within the terms of article 5 (b) of the first schedule to that Act. *Mulchand Lala v. Kashibullov Biswas* (1) referred to.

THIS was a suit for recovery of arrears of hire of a sugarcane pressing machine and two cane juice boiling pans, together with interest. It was based on entries in two registers of the plaintiff, which were recorded in the third person and were as follows. It was recorded that Harkesh, son of Kunwar, and two others, residents of Salempur, hired a sugarcane pressing machine (description and number given) in consideration of a rent of Rs. 15, from the plaintiff through his *karinda* (named), that they would pay the hire in *Chait*, and in default would pay interest at 2 per cent. per mensem. Below that entry appeared the thumb marks of the persons hiring the machine. In the case of the hiring of the pans, the language employed was similar, except that there was the further stipulation that the hirers would return the pans at their own cost. The Munsif was of opinion that the entry was a memorandum of agreement and required to be stamped with an eight anna stamp; but referred the matter to the High Court under the provisions of section 60 of the Indian Stamp Act, 1899.

\* Miscellaneous Civil No. 431 of 1913. Reference under section 60 of the Indian Stamp Act, 1899.

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Mr. *Nihal Chand* (for the plaintiff), submitted that the entry was in the third person made by the agent of the firm for his master's information and not with a view to base any claim on it. The thumb impressions of the defendants below the entry were taken to prove the correctness of the entry. The entry might assist in proving the contract, but it was not an agreement. He referred to Donough's Stamp Act, p. 211; *Carlill v. Carbolic Smoke Ball Company* (1), *Udit Upadhyaya v. Bhawani Din* (2) and *Dulmha Kunwar v. Mahadeo Prasad* (3). The sole test was whether a decree could be passed on this entry without any oral evidence being given of the contract entered into between the parties.

The Officiating Government Advocate (Mr. *W. Wallach*) for the Crown, submitted that in England all leases and agreements were written in the third person. The Munsif was right in holding that the document should not be disregarded, as it bore the thumb impression of the defendants, in spite of the fact that it was written in the third person. He referred to *Mulchand Lala v. Kashibullav Biswas* (4) and *Murari Mohun Roy, v. Khetter Nath Mullick* (5). In the case reported in 27 All., p. 84, the Judges did not consider what a memorandum of an agreement was.

KNOX, BANERJI and TUDBALL JJ:—This is a reference made under sub-section (1) of section 60 of Act No. II of 1899. The court making the reference is the Munsif of Deoband and the reference was made, as the law requires, through the District Judge of Saharanpur. The document to which the reference relates is a document contained in a book which purports to be a register of sums payable with respect to the letting out of wooden machines (*charlhi*) and rollers for pressing sugarcane and iron pans for boiling sugarcane juice. The documents in question are to be found as entries Nos. 20 and 23 for the year 1909 in these registers. The entries are to the effect that "Harkesh, son of Kunwar, and two others, residents of mauza Salempur, hired a sugarcane pressing machine in consideration of a rent of Rs. 15, from the plaintiff through his *karinda* (named), that they would pay the hire in *Chait*, and in default would pay interest at 2 per cent. per mensem."

(1) (1892) L.R. 2 Q.B., 490.

(3) Weekly Notes, 1906, p. 80.

(2) (1904) I.L.R., 27 All., 84.

(4) (1907) I.L.R., 35 Cal., 111.

(5) (1887) I.L.R., 15 Cal., 150.

Below this entry appear the thumb marks of the persons who hired the machine. In one of the documents there is a further statement that the hirers would return the pans hired at their own cost. After hearing the learned counsel on both sides and carefully considering the terms of the documents, we are satisfied that each of these documents is an "instrument" as defined in sub-section (14) of section 2 of Act No. II of 1899, and that the contents of the documents fall within the terms of article 5 of schedule I of the said Act, being memoranda of agreements within the meaning of that article. Under clause (b) of article 5, each of the documents therefore required a stamp of eight annas. This case is similar to the case of *Mulchand Lala v. Kashiballav Biswas* (1). This is our answer to the reference. A copy of this will be sent under seal of the Court and bearing the signature of the Registrar to the Chief Controlling Revenue Authority and another copy to the Judge who made the reference.

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## MISCELLANEOUS CRIMINAL.

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November, 12.

Before Justice Sir George Knox.

EMPEROR v. MANGAL AND OTHERS.\*

*Criminal Procedure Code, sections 244 and 540—Right of accused to summon witnesses—Second application by accused to magistrate not scised of the case—Procedure—Affidavit.*

When an accused person has been called upon to make his defence and has applied for and obtained the summoning of witnesses on his behalf, his only means of procuring the summoning of further witnesses is to ask the Court to take action under section 540 of the Code of Criminal Procedure.

The accused has no right to put in a second application *simpliciter* for the summoning of more witnesses, nor has the Court any power to grant such an application, more particularly when such Court is a magistrate not scised of the case, to whom the application is made in the absence of the trying magistrate.

Observations on the contents, drafting and attestation of affidavits.

THIS was an application for the transfer of a case under Act No. III of 1907 pending against the applicant in the court of a Magistrate of Mirzapur district. The facts upon which the application was based are set forth in detail in the order of the High Court.

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\* Criminal Miscellaneous No. 223 of 1913.

(1) (1907) I. L. R., 35 Calc., 111.