

in that section should be taken as confined to collecting rents from raiyats, or should be taken to be applicable also to cases where rents are collected, not from raiyats but from under-tenants of the same class as the lessees, it is not necessary for us in the present case to decide.

Under these circumstances we think that the provision as to limitation contained in Schedule II annexed to the Act has no application in this case. It has been held by a Full Bench of this Court [*Mackenzie v. Haji Syed Mahomed Ali Khan* (1)] that in suits for rent governed by the Bengal Tenancy Act the limitation is three years, as provided in article 2 of the third schedule, although the lease might be a registered lease; and in respect of cases not governed by the Bengal Tenancy Act, where there is a registered lease, it has been held, both in this Court and also in other High Courts, that the limitation is six years as prescribed by article 116 of the Indian Limitation Act, XV of 1877. In this case, the lease is a registered lease, and therefore, in accordance with these rulings, the plaintiff is entitled to recover rent for six years as sued for. The result is that this appeal will be dismissed with costs.

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LIMITED,
v.
JUDONATH
GHOSH.

Appeal dismissed.

A. A. C.

REFERENCE FROM THE BOARD OF REVENUE.

*Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Prinsep,
and Mr. Justice Pigot.*

IN THE MATTER OF ACT I OF 1879 AND IN THE MATTER OF A REFERENCE
FROM THE BOARD OF REVENUE UNDER SECTION 46 OF THE
INDIAN STAMP ACT.*

1890
March 30.

*Stamp Act (1 of 1879), ss. 3 (15), 25 (c), and Schedule I, Article 49—Policy
of Insurance—Uncovenanted Service Family Pension Fund, stamp on
entrance certificate of the.*

An Entrance Certificate granted under the rules of the Uncovenanted Service Family Pension Fund is a life policy within section 3 (15) of the

* Civil Reference No. 13 of 1891 made by the Board of Revenue, dated the 20th of November 1891.

(1) I. L. R., 19 Calc., 1.

1892 Stamp Act for an amount not exceeding Rs. 1,000, and is therefore chargeable with a duty of 6 annas. Such an instrument is not within the scope of section 25 (c) of the Stamp Act.

REFERENCE UNDER STAMP ACT, 1879, s. 46. THIS was a reference from the Board of Revenue under section 46 of the Indian Stamp Act (I of 1879).

The question referred was as to the stamp to be placed upon the following certificate:—

“UNCOVENANTED SERVICE FAMILY PENSION
FUND.

ENTRANCE CERTIFICATE.

Widow's Pension Fund.

No.

Certified that Mr. _____ has been admitted a member of the Uncovenanted Service Family Pension Fund, and that, provided he conforms to the requirements of that institution, his widow will be entitled to a monthly pension of Rs.

Dated this _____ day of _____ 189 .

Board of Directors.

Secretary.”

The Government of India, in forwarding to the Government of Bengal a copy of certain correspondence with the Government of Bombay upon this subject, observed that “it appears from this correspondence that the entrance certificate issued by the Uncovenanted Service Family Pension Fund in Calcutta is stamped with an 8-anna stamp, though properly chargeable under Article 49 (b) of Schedule I of the Indian Stamp Act, I of 1879, with a duty of 6 annas for every Rs. 1,000 secured by the certificate, the valuation of the annuity subscribed for being determined for assessment to duty under section 25 (c) of the Act,” and requested that the matter might be brought to the notice of the Directors of the Fund and of the Board of Revenue.

The Secretary to the Fund, under the instructions of the Directors, submitted to the Board representations to the effect that the provisions of the Stamp Act were inapplicable to such instruments. After some correspondence the Board were of opinion that the question of the proper stamp with which the certificate was

chargeable was one of considerable doubt and difficulty, and that it was desirable to refer the matter to the High Court.

In referring the above question the Board invited the attention of the Court to the specific character assigned to the certificate by rules 39 and 46 of the Association, which ran as follows:—

“ *Rule 39.*—That mere payment of money shall not, in the event of lapse, entitle parties to the benefits of the Fund, as, in order to the validity of their claims, the usual entrance certificate must have been executed, the date of which document shall be taken to be the date of the admission of an applicant, provided he was in existence on that date.

“ *Rule 46.*—That before nominees can be admitted to the benefits of the Fund, the entrance certificate must be surrendered to the Directors, and certificates must be furnished of the subscriber’s death and the cause of death from his medical attendant or other competent authority, and of the identity and existence of the nominees.”

The *Advocate-General* (Sir *Charles Paul*) and the *Officiating Standing Counsel* (Mr. *Pugh*) appeared for the Government.

Mr. *G. H. P. Evans* appeared for the Fund.

The *Officiating Standing Counsel* (Mr. *Pugh*).—‘Policy of Insurance’ is defined by section 3 (15) of the Stamp Act, and includes a life policy (see article 49 of the first schedule of the Act, and article 43, schedule A, of Act XXXVI of 1860). Under the old Act there was an assessment of 8 annas: at present only 6 annas is levied. In the present case there is a contract of insurance. The method of levying the duty proposed by Government was by calculating it on twelve times the annual sum secured, having regard to section 25 (c).

Mr. *G. H. P. Evans*.—The question is, whether or not the entrance certificate is a ‘life policy’ within the Act. The document itself is not in the nature of a contract, but is merely a certificate of admission. The Fund does not insure lives. In endeavouring to ascertain how much each person has to subscribe, it is necessary to enter into actuarial calculations in order to see the cheapest way of constructing a fund. There is no assurance in the ordinary sense of

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Execution of certificate necessary for validity.

Documents required.

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the word, although the same contingencies have to be taken into consideration to secure the stability of the Fund. The certificate does not purport to be a contract, but only a certificate of admission into a society. The result of entering such a society is to benefit a man's children. Then why treat it as a contract? It is a receipt requiring a 1-anna stamp. If stampable otherwise than as a receipt, it must be a life policy which contemplates a sum certain, whereas it is not certain that anything will be paid here. All the current definitions of life insurance are collected in Crawley, on Life Insurance (1882), page 20, and support this argument. In the Madras case [*Anonymous Case referred by the Board of Revenue* (No. 2 of 1875) (1)] it was held that a certificate of sale cannot be converted into a conveyance. The Statute 33 and 34 Vict., c. 97, s. 117, includes documents evidencing a contract, which is not the case here. The stamp must be fixed by what is stated in the instrument, and cannot depend upon collateral evidence—*Chandrakant Mookerjee v. Kartikeharan Chaile* (2). The Act only contemplates the ordinary case of a life insurance in which a sum certain is assured to a person upon the dropping of a life. Article 60 includes "Policy" under the head of Transfer. We do not carry on the business of life insurance and make no contract of any kind. In *Kraal v. Whymper* (3) and *Fulle v. MacEwen* (4) the nature and object of these societies is defined. In a case under the Friendly Societies Act it was held that the statute only contemplated a mutual contribution on the part of the members for their wives and children, the term "insurance" being incorrectly used—*Kelsall v. Tyler* (5). *Edwards v. Warden* (6) was a case on the Bombay Civil Service Fund. In the *East India Company v. Robertson* (7) the history of the Madras Civil Service Fund was examined. The nominees in the present case are really beneficiaries.

The *Advocate-General* (Sir Charles Paul) in reply.

PETHERAM, C.J.—The question referred to us by the Board of Revenue is, what is the stamp which an Entrance Certificate under the rules of the Uncovenanted Service Family Pension Fund

(1) 8 Mad. H. C., 112.

(2) 5 B. L. R., 103 (105).

(3) I. L. R., 17 Calc., 786.

(4) I. L. R., 7 Calc., 1.

(5) 11 Exch. Rep., 513 (528, 532, 537).

(6) L. R., 1 Ap., Ca., 281.

(7) 12 Moo. P. C., 400.

should bear. By the contract which is evidenced by the document, the person to whom the certificate is issued in consideration of a money payment secures an income after his death for a time to another person, subject to certain contingencies. This is, I think, a contract of assurance, and the document which evidences such a contract is, I think, a life policy, and is within section 3 and sub-section 15 of the Stamp Act. The amount insured is quite uncertain in every case, and it is impossible to predict whether anything, or if anything what, will ever become payable by the Fund under the contract, and the contract cannot, I think, be defined as an insurance for any particular amount, and therefore cannot be for an amount which exceeds Rs. 1,000. That being so and it being an insurance, it must be a life policy for an amount which does not exceed Rs. 1,000, and the stamp duty on such an instrument is 6 annas.

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 1879, s. 46.

It is, I think, clear that such an instrument as this is not within the scope of section 25. Sub-section (c) of that section, which is the only one within which it has been said to be included, deals with contracts under which for some executed consideration money becomes immediately due, though payable by fixed periodical payments. And it is, I think, enough to say that that is not the present case, and there is no provision in the Act which can relate to the valuation of annuities secured by life policies.

My answer to the question is that the stamp duty which an entrance certificate under the rules of the Uncovenanted Service Family Pension Fund should bear is 6 annas.

PRINSEP, J.—I agree that, read with the rules of the Uncovenanted Service Family Pension Fund, this paper may be regarded as a life policy, and also that it does not come within section 25 of the Stamp Act. We have not the means of ascertaining its value. That can be obtained only by such a calculation as is not open to us. In the absence of such information we must take it in the most favourable way to the person being taxed, that is to say, we must assess it at the lowest possible value below Rs. 1,000, and it should therefore be assessed at 6 annas.

PIGOT, J.—I agree.