

ciency is not made good by the date mentioned above, the appeal shall stand dismissed with costs. The plaintiffs, in any event, will bear their own costs and pay the costs of the defendant.

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MISCELLANEOUS CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

MANGAL PURI (PLAINTIFF) v. BALDEO PURI

(DEFENDANT)*

1938
February, 2

*Stamp Act (II of 1899), article 35(a)(i) and (viii)—Lease—
Monthly tenancy of house, terminable by a month's notice—
Lease "not for any definite term".*

A lease creating a monthly tenancy of a house, terminable on a month's notice, and not mentioning any period of duration of the lease, is not a lease "purporting to be for a term of less than one year" and does not fall under article 35(a)(i) of the Stamp Act. A lease for less than one year means a lease for some specified period which is less than twelve months. The lease in question is for an indefinite period, and is a lease which "does not purport to be for any definite term" and falls under article 35(a)(viii) of the Stamp Act (as amended for the United Provinces).

The parties were not represented.

COLLISTER and BAJPAI, JJ.:—This is a reference by the District Judge of Jhansi under section 60(1) of the Stamp Act.

A document was filed in suit No. 26 of 1934 under which two houses were leased to certain persons and it was stipulated in the lease that if the owner wished to have the houses vacated, he was to give one month's notice. The Inspector of Stamps is of opinion that the document falls under article 35(a) (iv) of the first schedule of the Stamp Act, while the Civil Judge, in whose court the document was presented, is apparently of opinion that it falls under article 35(a)(i). Article 35(a)(i) provides that where the lease purports to be for a term of less than one year, duty should be charged at a certain rate, and article 35(a)(iv) [35(a)(viii) as amend-

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ed for the United Provinces] provides that where the lease does not purport to be for any definite term, duty should be charged at a certain other rate. The view taken by the Civil Judge finds support from a decision of the Calcutta High Court in *Amolia v. Ibrahim Ishak* (1). In that case there was a document in which the lessee of a shop agreed to pay the rent each month, and the learned Judges held that since there was a monthly tenancy the document came under article 35(a)(i) of the first schedule of the Stamp Act. The learned Chief Justice observed: "In this case learned counsel has conceded—and I think rightly—that the tenancy was a monthly tenancy and, consequently, it comes within article 35, clause (a), sub-clause (i) of the first schedule of the Indian Stamp Act; that is to say, 'the lease purports to be for a term of less than one year.' Therefore, the proper stamp duty is the same duty as for a bond which is referred to in article 15."

With the greatest respect we are unable to agree with this view. There is certainly no doubt that this is a monthly tenancy within the meaning of section 106 of the Transfer of Property Act, but it does not follow from this that the document is a lease for less than one year. A lease for less than one year means a lease for some specified period which is less than twelve months. In the present case the lease is for an indefinite period; in other words, it "does not purport to be for any definite term". We have no doubt whatever that this document falls under article 35(a)(iv) [(35(a)(viii) as amended for the United Provinces] and therefore stamp duty is chargeable as provided for such a lease. In our opinion the view taken by the Inspector of Stamps is correct. This is our answer to the reference. A copy of our order will be sent under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue authority and another copy will be sent to the learned Judge who has made the reference.