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is applicable, as I think it is, it follows that the claim of the plaintiffs in this case is barred beyond six years back from the period when the suit was brought.

The result is that the decree of the learned District Judge will be varied by limiting the amount recoverable to the dues falling within six years from the date when the suit was instituted. I think that the appellant is entitled to his proportionate costs of this appeal.

FOSTER, J.—I agree.

Decree varied.

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Jwala Prasad, J.

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v.

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Court-Fees Act, 1870 (*Act VII of* 1870, *as amended by Bihar and Orissa Act II of* 1922), *Schedule II, Article* 10—*Advocate, power of appointment in writing filed by, whether requires a stamp—" vakalatnama ", meaning of—Code of Civil Procedure*, 1908 (*Act V of* 1908), *section* 2(*15*) *and Schedule I, Order III, rule* 4(*3*)—*Stamp Act,* 1899 (*Act II of* 1899), *section* 2(*21*) *and Schedule I, Article* 48—*Government of India Act*, 1919 (9 *and* 10 *Geo. V., Ch.* 101), *section* 101(*d*).

The word " vakalatnama " as used in Article 10, Schedule II of the Court-fees Act, 1870, refers to a power-of-attorney filed by a " pleader " within the meaning of section 2(*15*) and Order III, rule 4, Code of Civil Procedure, 1908.

Therefore, a power of appointment in writing filed by an advocate, whether he be a barrister or not, authorizing him

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* In the matter of appeal from Original Decree no. 185 of 1922.

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to make or do any appearance, application or act on behalf of his client, requires to be stamped as a vakalatnama under Article 10, Schedule II of the Court-fees Act.

Parmanand v. *Sat Prasad* (1) and *Reference under section 46 of the Indian Stamp Act, 1879* (2), relied on.

Laurentius Ekka v. *Dukhi Koeri* (3), referred to.

The facts of the case material to this report are stated in the order of Jwala Prasad, J.

S. M. Naimatullah, for the appellants.

L. N. Singh, for the respondents.

JWALA PRASAD, J.—This is a reference to me as a Taxing Judge under section 5 of the Indian Court-fees Act. The question is whether a particular document requires any stamp. The document is a letter of appointment given by two persons, Sheikh Abdul Ghaffar and Sheikh Abdul Jabbar, appellants in First Appeal no. 135 of 1922 pending in this Court, to Mr. S. M. Naimatullah, Barrister-at-Law, who has been enrolled as an advocate of this Court. The letter of appointment runs as follows:

"Dear Sir,

I/We hereby appoint you to act and plead on my/our behalf in the above noted case and to make or withdraw all deposits that may have to be made or withdrawn on my/our behalf in connection with the said case."

It bears the following heading:

"F. A. no. 135 of 1923, Sheikh Abdul Ghaffar (Appellants/Respondents) *versus* F. H. Downing (Respondents—Opposite party)."

This is in accordance with notification no. 57, dated the 16th September, 1925, published in the Gazette on the 7th October, 1925, which runs as follows:

"Notwithstanding anything contained in Order III, rule 4(3), of the First Schedule of the Code of Civil Procedure, 1908, no advocate shall be entitled to make or do any appearance, application or act for any person unless he presents an appointment in writing, duly signed by such person or his recognized agent or by some other agent duly

(1) (1911) I. L. R. 33 All. 487, F. B.
(2) (1886) I. L. R. 9 Mad. 358, F. B.
(3) (1925) I. L. R. 4 Pat. 766.

authorized by power-of-attorney to act in this behalf; or unless he is instructed by an attorney or pleader duly authorized to act on behalf of such person."

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Previous to the aforesaid notification no advocate who was a barrister was required to present any document empowering him to act by virtue of clause (*3*) of rule 4 of Order III of the Code of Civil Procedure. The first clause of that rule requires that the appointment of a pleader to make or do any appearance, application or act for any person shall be in writing and shall be signed by such person or by his recognized agent or by some other person duly authorized by power-of-attorney to act in this behalf. The word "pleader" is defined in section 2, clause (*15*), Civil Procedure Code, as:

"any person entitled to appear and plead for another in court, and includes an advocate, a vakil and an attorney of a High Court."

Therefore, in order to exempt an advocate from the necessity of filing his appointment by his client in writing, clause (*3*) of rule 4 of Order III was enacted. The effect of the recent notification referred to above is to dispense with clause (*3*) of rule 4 and an advocate has now to file his appointment in writing like any other legal practitioner in the High Court. The appointment is for the purpose of authorizing him to make or do any application or appearance or act on behalf of a suitor in this Court. Rule 1 of Order III enacts,

"Any appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf."

The subsequent rule defines "Recognized agents" as including amongst others persons holding powers-of-attorney, authorizing them to make and do such appearance or applications or acts on behalf of such parties. Therefore the letter of appointment authorizing an advocate to make or do appearance or

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application or act on behalf of any party in a litigation in this Court is a power-of-attorney. It is distinguishable from a power-of-attorney given to one who does not belong to the legal profession inasmuch as an advocate is a pleader within the meaning of the term as defined in the Code of Civil Procedure. The letter of appointment being a power-of-attorney is not a document exempted from payment of stamp duty for all powers-of-attorney are chargeable to duty whether they come within the definition of a power-of-attorney given in clause (*21*) of section 2 of the Stamp Act or are powers-of-attorney which go by the special name of vakalatnamas or mukhtarnamas. The former are chargeable with the duty prescribed in Article 48, Schedule I of the Indian Stamp Act, and the latter under Article 10, Schedule II of the Court-fees Act. There can, therefore, be no doubt that the letter of appointment in question in the present case filed by Mr. Naimatullah, and for the matter of that any similar power-of-attorney called by whatsoever name filed by an advocate, whether he is a barrister or not, must bear stamp duty. Formerly the barrister-advocates were exempted from filing their appointment in writing and therefore there could be no question of their payment of any duty: but since they are now required to put in their appointment in writing for the specific purposes of making or doing any appearance, application or act on behalf of any suitor in this Court or in the courts subordinate to this Court, the letter of appointment must be stamped with duty. Under the old rules also the power-of-attorney in question was chargeable with duty for it authorizes Mr. Naimatullah to withdraw deposits in Court on behalf of his client.

It was ruled long ago by Sir Edward Chamier, C.J., that if a barrister wanted to perform the functions of a pleader he must file a vakalatnama [vide letter no. 5306, dated the 15th August, 1917, from the Registrar of this Court to the Registrar of the Circuit Court, wherein it is stated that Counsel must file a written authority similar to that required

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from vakils to enable him to withdraw money]. In the case of *Laurentius Ekka* v. *Dukhi Koeri* (1) I have referred to the case of Mr. Misra, a barrister-advocate of this Court, practising at Cuttack. He applied for refund of money on behalf of his client and filed a petition under his own signature without filing a vakalatnama. The learned Chief Justice observed that if Mr. Misra wanted to perform the functions of a pleader he must file a vakalatnama. This view has been maintained in this Court in several cases and a practice has been established of not allowing refund of money to an advocate unless he is especially authorized in that behalf and files a duly stamped vakalatnama. The stamp law requires that a refund of money can only be made to a person holding a power-of-attorney duly stamped from the person on whose behalf withdrawal is sought. Therefore in so far as the letter of appointment in question authorizes Mr. Naimatullah to withdraw deposits on behalf of his client it is chargeable with a court-fee prescribed for a vakalatnama under Article 10, Schedule II of the Court-fees Act, irrespective of the notification in question. The power-of-attorney authorizes Mr. Naimatullah to act in the appeal on behalf of his client and the object of the Taxing Officer in referring the case to me is for the purpose of having a decision upon the general question whether a power of appointment which authorizes an advocate to act, who is a barrister or not, should be stamped as a vakalatnama under Article 10, Schedule II of the Court-fees Act, for he says that the question is one of importance and is likely to be raised frequently until the matter is finally decided. The general question is whether a power of appointment which authorizes an advocate of this Court to make or do any appearance, application or act on behalf of his client, should be stamped as a vakalatnama under the Court-fees Act. The recent notification requires an advocate of this Court, whether he is a barrister or not, to file a power of appointment in writing for the purpose of acting, appearing or making application on behalf of his

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client. I have already held that such a power of appointment must bear a stamp as a power-of-attorney either under Article 48, Schedule I, read with clause (*21*) of section 2 of the Stamp Act, or as a vakalatnama or mukhtarnama under Article 10, Schedule II of the Indian Court-fees Act.

It was held in the Full Bench case of *Parmanand* v. *Sat Prasad* (1) that a document purporting to authorize the person in whose favour it was executed, who was not a certificated mukhtar or pleader, to appear and do all acts necessary for the execution of a decree of a court, outside the United Provinces, which had been transferred to a court in those provinces for execution, required to be stamped as a power-of-attorney with a one rupee stamp and not as a vakalatnama or mukhtarnama. To the same effect is the Full Bench decision of the Madras High Court in a reference under section 46 of the Indian Stamp Act, 1879 (2). The distinction drawn is based on the principle that a pleader should file a power-of-attorney called mukhtarnama or vakalatnama as provided for in Article 10, Schedule II of the Court-fees Act, whereas any person who is not a pleader may file a power-of-attorney as provided for in the stamp law.

Now the word "pleader" as defined in section 2, clause (*15*) of the Code of Civil Procedure, includes an advocate, a vakil and an attorney of a High Court, and his appointment to make or do any appearance, application or act for a suitor, will, for the purpose of rule 4, Order III, clause (*1*), be an appointment of a pleader. Inasmuch as the appointment in writing of a pleader, under rule 4, Order III, requires a fee prescribed for the power-of-attorney known by the name of vakalatnama in Article 10 of Schedule II of the Court-fees Act, a similar power of appointment in writing filed by an advocate, whether he is a barrister or not, will also require a stamp prescribed for a vakalatnama. It is contended that the word

(1) (1911) I. L. R. 33 All. 487. (2) (1886) I. L. R. 9 Mad. 358.

"vakalatnama" applies to a power-of-attorney given to a vakil and consequently a power-of-attorney given to an advocate would not come under the word "vakalatnama" mentioned in Article 10, Schedule II of the Court-fees Act.

Reference has been made to the Legal Practitioners' Act which recognizes three classes of practitioners called Vakils, Pleaders and Advocates and it is said that the word "vakalatnama" used in the aforesaid Article 10 of the Court-fees Act refers only to the power-of-attorney filed by a vakil and not to a power-of-attorney filed by an advocate. The argument ignores the fact that the pleaders of the subordinate courts who are not vakils in the special sense of the term as not being entitled to practise in the High Court, are also required to file vakalatnamas for which a fee is payable as prescribed in Article 10, Schedule II of the Court-fees Act. The word 'vakil' used in Article 10 does not, to my mind, refer to the special class of practitioners known as 'vakils'. It is a vernacular word and connotes in English a document which authorizes one person to represent another. The word 'vakil' itself means an agent or representative authorized to conduct any business on behalf of another person, and in the Muhammadan law persons who conduct marriages on behalf of the principals are called vakils. Persons who conduct a case in court for another came subsequently to be called vakils and such agents were recognized in the law courts prior to the establishment of the British Courts in India and any pleader practising in the lower courts even now is popularly called a vakil though he is not a vakil in the special sense of the term which applies only to one entitled to practise in the High Court. The word 'pleader' as used in the Code of Civil Procedure includes a 'vakil' and an 'advocate' and in the Government of India Act, section 101 (*d*), a vakil is described as a pleader of a High Court. Article 10 of the Court-fees Act uses the word 'vakalatnama' as meaning a power-of-attorney executed for the conduct of any case in a court

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and its various provisions indicate that the word 'vakalatnama' relates to a power filed by a legal practitioner to conduct a case on behalf of a suitor irrespective of the class to which that legal practitioner belongs. The word 'vakalatnama' there refers to a power-of-attorney filed by a pleader as used in the Code of Civil Procedure, section 2, clause (*15*), and Order III, rule 4. Therefore a power-of-attorney filed by an advocate would also come under the category of vakalatnama mentioned in Article 10 of the Court-fees Act when it authorizes an advocate for the purpose of conducting a case to make or do any appearance, application or act on behalf of his client.

I therefore hold that the power of appointment in writing filed by an advocate, whether he is a barrister or not, authorizing him to make or do any appearance, application or act on behalf of his client, would require a court-fee payable upon a vakalatnama as prescribed in Article 10, Schedule II of the Act.

APPELLATE CRIMINAL.

Before Adami and Bucknill, J.J.

1925.

Oct., 27, 28; Nov., 10.

RANJIT NARAIN SINGH

v.

RAMBAHADUR SINGH.*

Code of Criminal Procedure, 1898 (*Act V of* 1898), *sections* 476, 476A *and* 476B—*appellate court making complaint under section* 476B, *whether appeal lies against the order of—interference by the High Court in extraordinary cases.*

A money suit was dismissed by the Munsif who tried it on the ground that he was not satisfied that the signatures on certain receipts and other documents were genuine. This decision was confirmed by the Subordinate Judge on appeal. Thereupon the defendants applied to the Munsif to make

* Criminal Appeal no. 133 of 1925, from the decision of F. F. Madan, Esq., I.C.S., District Judge of Gaya, dated the 10th July, 1925.