// THE
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FULL BENCH.

Before Tek Chand, Dalip Singh and Rangi Lal JJ.

NANAK CHAND—Plaintiff

versus

FATTU—Defendant.

1935

June 22.

Civil Reference No. 18 of 1934.

Indian Stamp Act, II of 1899, Articles 1, 5 (c) : Memorandum of a transaction of sale of goods on credit — thumb-marked by purchaser — whether liable to stamp duty.

Held, that a memorandum in the *bahi* of the vendor of a purchase of certain articles by a certain person (who had no previous account with the vendor) at certain prices totalling Rs.54-10-0, thumb-marked by the purchaser is not 'an agreement or memorandum of agreement' under Article 5 of the Indian Stamp Act, nor is it 'an acknowledgment of a debt' covered by Article 1. It is simply a memorandum of a transaction of purchase of goods on credit and as such is not liable to stamp duty.

Carlill v. *The Carbolic Smoke Ball Company* (1), referred to.

Pahlad v. *Shib Lal* (2), distinguished and explained.

Case referred under section 57 of the Indian Stamp Act by Mr. A. Latifi, Financial Commissioner, Revenue, Lahore, with his U. O. No. 1019-M. (Ct.) of the 17th April, 1934, for orders of the High Court.

SHAMAIR CHAND, as *amicus curiæ*, with FAKIR CHAND MITAL.

EDMUNDS, Assistant Legal Remembrancer, for Crown.

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TEK CHAND J.—This is a reference under section 57 of the Indian Stamp Act made by the Financial Commissioners, Punjab, for decision of the question whether a certain *bahi* entry (Exhibit P.1) produced in evidence in Civil Suit No.1002 of 1932, *Nanak Chand* v. *Fattu*, decided by the Subordinate Judge, 4th Class, Ludhiana, on the 15th of March, 1933, is "an acknowledgment of a debt implying a promise to pay" and is liable to stamp duty of Re.1, as an agreement under Article 5 (*c*) of Schedule I-A of the Indian Stamp Act.

The suit was for recovery of a certain sum of money as the price of jewellery alleged to have been sold by the plaintiff to the defendant, but not paid for. In support of the claim the plaintiff produced the entry in question, which was duly proved and admitted in evidence. The defendant in his written statement denied the claim, but eventually he admitted it and confessed judgment. On this admission the Subordinate Judge passed a decree for the sum claimed, payable in certain instalments.

Some time later, the officials of the Collector's office reported that the *bahi* entry was not properly stamped, and that it should not have been admitted in evidence without payment of the duty chargeable and the penalty prescribed in section 35 of the Act. The Collector agreed with this view and sent the case to the District Judge for action under section 61 of the Act. The District Judge called for a report from the Subordinate Judge who had tried the suit. The Subordinate Judge reported that the *bahi* entry in question was not a promissory note (as suggested by the Collector's office) nor was it an acknowledgment, and, therefore, it was not liable to stamp duty and had been

correctly admitted in evidence. The District Judge agreed with this view.

The Collector then submitted the papers, with the District Judge's opinion, to the Financial Commissioners as the Chief-Revenue-Controlling Authority. The Financial Commissioner (Revenue) agreed with the Civil Courts that the entry in question was not a promissory note as defined in section 2 (22) of the Stamp Act. He, however, was of the opinion that the entry was "an unconditional acknowledgment of a debt implying a promise to pay in the sense of the ruling in *Pahlad* v. *Shib Lal* (1)," and, therefore, it should not have been admitted without payment of Re.1 as stamp duty and Rs.10 as penalty, as on an agreement under Article 5 of Schedule I-A of the Indian Stamp Act, read with section 35 of the Act. He has accordingly referred the question to this Court for decision under section 57 of the Act.

When the case first came up before us, neither the plaintiff nor the defendant in the suit was represented, nor was there any appearance on behalf of the Crown. As the question appeared to us to be of general importance, we considered it desirable to hear arguments in support of the views expressed respectively by the learned Financial Commissioner and the learned District Judge. We, therefore, adjourned the hearing and issued notice to the Government Advocate. Mr. Shamair Chand having volunteered to argue the case as *amicus curiæ*, we have heard him and also the learned Assistant Legal Remembrancer and are indebted to both of them for their assistance.

It appears that the defendant had no previous account with the plaintiff. On the 23rd of July,

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1930, he purchased jewellery from the plaintiff, but did not pay for it at the time, and made the following entry (Exhibit P.1) in his *naqal bahi* :—

Debit.

"Under date *Sawan Badi* 12 *Sambat* 1987 (23rd July 1930). Debited to Fattu Mal barber of Jamalpur.

	Rs.	A.	P.
One pair of gold *phuls* weighing 8 *mashas*, 6 *rattis* at the rate of Rs. 22, worth..	17	8	0
Including the price of silver ..	17	8	0
Bal tandiri weighing 20 rupees and wages	11	0	0
Silver *phuls* weighing 3¾ rupees ..	2	4	0
Bangles weighing eight rupees ..	4	9	0
In account of the Jahangarhis *Jahangarhie vichon baqi kar gaye* ..	3	0	0
Arsi	1	3	0
Dandis	0	7	0
Inam	10	0	0
Kole of silver	0	6	0
Jahangarhis weighing 7 rupees and 10 annas and wages	4	5	0
Total ..	54	10	0

Thumb mark of Fattu."

The question for decision is whether this entry is an "agreement or memorandum of agreement not otherwise provided for" in the Stamp Act, and as such chargeable under Article 5 (*c*) of the Act. It is conceded that it does not purport to be a formal agreement, but it is contended that it is in substance an "agreement," or at least "a memorandum of agreement" to pay the price of the articles mentioned. The entry, however, does not contain any words which expressly, or by necessary implication, support this

contention. It purports to be, as in fact it is, a mere memorandum of a transaction of the purchase on credit of ten pieces of jewellery at the price stated. It is like a voucher which a purchaser, who buys on credit, leaves at the shop of the seller, giving particulars of the articles bought and the price at which they have been bought. The fact that the entry was made in the *bahi* of the seller, and not on a separate piece of paper makes no difference. It is no doubt true, that such a voucher or memorandum can be used—and is probably intended to be used—as evidence of the fact that the purchaser had bought from the seller certain goods, the price of which he had not paid at the time. But this circumstance does not convert it into "an agreement or a memorandum of agreement." As observed by Hawkins J. in *Carlill* v. *The Carbolic Smoke Ball Company* (1), while interpreting the corresponding section of the English Act: "No document requires an 'agreement stamp' unless it amounts to an agreement or a memorandum of agreement. The mere fact *that a document may assist in proving a contract does not render it chargeable with stamp duty;* it is only so chargeable when the document amounts to an agreement *of itself*, or to a memorandum of an agreement already made."

Obviously the entry before us does not amount to an agreement of itself, nor does it refer to any pre-existing agreement, of which it purports to be a memorandum.

The word "agreement" is not defined in the Indian Stamp Act. The Indian Contract Act contains a definition of "agreement" for the purposes

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of that Act. This definition has been frequently referred to in interpreting the word in other enactments of the Indian Legislature. In section 2 (*b*) of the Contract Act it is laid down that a " proposal when accepted becomes a *promise* " and in clause (*c*) of the same section it is provided that " every promise, and every set of promises forming the consideration for each other, is an *agreement*." The entry (Exhibit P.1) does not make mention of any ' promise ' or ' set of promises forming the consideration for each other; nor is such a ' promise or set of promises ' implicit in its terms. In thumb-marking the entry, the defendant did not give his ' acceptance ' to any ' proposal,' nor did he bind himself ' to do, or abstain from doing, anything at the desire of another.' It seems to me clear that Article 5 does not in terms apply to the document in question.

The learned Assistant Legal Remembrancer contends, however, that the entry falls within the *proviso* to Article 1 of the Act and, as such, is liable to be stamped as an agreement. In my opinion this contention is without any substance. Article 1 prescribes a stamp duty of one anna on an " *acknowledgment of a debt* exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass book) or on a separate piece of paper, when such book or paper is left in the creditor's possession : *provided* that such *acknowledgment does not contain any promise to pay the debt, or any stipulation to pay interest or to deliver any goods or other property.*"

Before determining whether a particular document is excepted from the operation of Article 1, it

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must first be seen that it is an " acknowledgment of a debt," written or signed in the manner, and for the purpose, described in the first part of the Article. Clearly, the document before us does not contain any such " acknowledgment of a debt." Indeed, in this case there were no previous dealings between the parties, nor can it be said that there was any ' debt ' due which the executant purported to acknowledge by thumb-marking the document, Exhibit P.1. As already stated, this entry is merely a memorandum of a transaction of purchase of goods on credit. It is not a type of document which falls within the ambit of the first part of Article 1, and consequently no question of its exemption under the *proviso* arises. The argument, therefore, fails on this short ground.

In the order of the Financial Commissioner as well as in the course of the arguments before us, reference was made to *Pahlad* v. *Shib Lal* (1) and it was suggested that the entry in question was " an unconditional acknowledgment of a debt implying a promise to pay in the sense of that ruling " and, therefore, liable to be stamped as an agreement. With all respect, I cannot find any similarity between the two cases. I have already stated above, that there is no acknowledgment of a debt in the present case. In the case cited, dealings had existed between the parties for many years, and the debtor had signed an entry in the creditor's *bahi* acknowledging the pre-existing debt. This entry was unstamped and the question arose whether it could form the basis of a suit. It was held that *that particular acknowledgment* implied a promise to pay and, therefore, should have been stamped as an agreement, and was admissible on payment of the required duty under Article 5 and penalty

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under section 35. The two cases, therefore, are in no way parallel.

As I was a party to the decision in *Pahlad* v. *Shib Lal* (1), I wish to take this opportunity of saying that the scope of that decision appears to have been unduly extended. The judgment in that case proceeded on the peculiar wording of the entry then sued upon, and it was not intended to lay down—nor did it purport to lay down—any rule of general application. It was certainly not decided in that case, as appears to have been supposed, that every unconditional acknowledgment of a debt, made in a creditor's *bahi*—whatever its form and wording—amounts to an agreement and is, therefore, excepted from the purview of Article 1. It is hardly necessary to say that in a matter like this it is not possible to lay down any hard and fast rule, which will govern all cases. The question whether a particular acknowledgment falls within Article 1, or is excepted from its operation by the *proviso*, will depend on the wording of the document concerned. It may be stated, however, that in considering whether a document is governed by the Article or the *proviso*, it is important to bear in mind the well-settled (but often forgotten) principle, that it is the *document as it stands*, and *not the bargain* to which it refers, which has been made chargeable to stamp duty. As has been well put, "the duty is on the *instrument* and not on the *transaction*." [Halsbury's *Laws of England*, Vol. XXIV, para. 1541; and *cf. Minister of Stamps* v. *Townend* (2)]. If, therefore, a document is so worded that it expressly, or by necessary implication, comes within a particular provision of the Act, it must be stamped accordingly. But the implication must arise from

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the *phraseology used in the document*, and not be a matter of *legal* inference or presumption. An implication of law does not involve liability to duty, though it may give rise to certain legal obligations. It does not, therefore, follow, that simply because a particular document is a good 'acknowledgment' for the purpose of extending time under section 19 of the Indian Limitation Act, or that it may be the basis of a suit, that it must necessarily be chargeable to duty as an agreement under the Indian Stamp Act.

For the foregoing reasons, I am of opinion that in the case referred to us the entry (Exhibit P.1) did not require to be stamped and was rightly admitted in evidence by the Subordinate Judge.

Dalip Singh

Dalip Singh J.—I agree.

Rangi Lal

Rangi Lal J.—I agree.

A. N. C.