

APPELLATE CIVIL.

*Before Mr. Justice Nánabhái Hariddás, Mr. Justice Birdwood, and
Sir W. Wedderburn, Bart., Justice.*

EKNA'TH S. GOWNDE v. JAGANNA'TH S. GOWNDE AND ANOTHER.*

1885.
March 8.

Stamp—Release—Debts—Annuity—Act I of 1879.

J. and S. passed to their brother E. an instrument which set forth (1) that J. and S. relinquished their right to certain property in favour of E.; (2) that E. was to discharge certain debts; and (3) that E. was to pay to J. and S. an annuity.

Held, that the provisions in favour of J. and S. were a mere recital of the consideration moving from E.; that no interest was created in favour of J. and S.; and that, therefore, the instrument should be stamped as a release only.

THIS was a reference from E. P. Robertson, Commissioner, C. D., who requested the High Court to determine, under section 46 of the Stamp Act, I of 1879, the amount of stamp duty chargeable upon the instrument described in the following case, which he stated as follows:—

“The instrument in question appears to provide for the following matters:—

“(1). Relinquishment of the rights of the executants over certain specified property.

“(2). Agreement on the part of the person, in whose favour the document is executed, to pay off the debts incurred by the executants.

“(3). Agreement on the part of the person, in whose favour the document is executed, to pay Rs. 15 *per mensem* hereditarily to each of the executants.

“In the first place it is to be remarked that the executants of the document are intended to be bound only as regards the first^t of the above-mentioned matters, and that, so far as matters (2) and (3) are concerned, it is obviously the other party that is intended to be bound.

“If matters (2) and (3) are only incidentally touched on in the instrument as indicating the consideration for the release, and if

* Civil Reference, No. 55 of 1884.

1885.

EKNÁTH
 S. GOWNDE
 v.
 JAGANNÁTH
 S. GOWNDE.

they cannot, in effect, bind the party concerned without his executing a separate instrument, then it would seem that the instrument in question should be charged *as a deed of release only*. But should it be deemed valid as operating, not only against the executants, but also against the party in whose favour the same is executed, it ought in fairness to be made liable to pay stamp duty under section 7 of the Indian Stamp Act.

"Supposing that the instrument is liable to duty under section 7, it still requires to be decided whether the document falls under clause 1 or clause 2 of that section. I am of opinion that since the three matters, referred to above, arise out of the same transaction, the document should be regarded as falling under clause 2."

There was no appearance in the High Court on behalf of any party.

WEDDERBURN, J.—In this case the instrument sets forth (1) that Jagannáth and Somnáth relinquish their right to certain property in favour of their brother Eknáth; (2) that Eknáth is to discharge certain debts; and (3) that he is to pay an annuity to Jagannáth and Somnáth. The point for determination is, whether stamp duty is chargeable in respect of stipulations (2) and (3)? The document is executed by Jagannáth and Somnáth, but not by Eknáth. The provisions, therefore, purporting to be in favour of Jagannáth and Somnáth, are a mere recital of the consideration moving from Eknáth. No interest in their favour is created by the document, which, therefore, so far as stipulations (2) and (3) are concerned, cannot be regarded as an instrument chargeable with stamp duty. We are, therefore, of opinion that it should be stamped as a release only.
