

## LETTERS PATENT APPEAL.

Before Addison and Ram Lall JJ.

NOOR AHMAD—Plaintiff,

*versus*

MAHMUD ALI—Defendant.

1938

Nov. 8.

Letters Patent Appeal No. 110 of 1938.

*Indian Stamp Act (II of 1899), 1st Sch. Art. 35 (a) sub-cl. (1) and (viii) — Lease not fixing a term — granted on a monthly rental — terminable on one month's notice — Whether for less than one year within the meaning of Art. 35 (a) (i) or for an indefinite period within the meaning of Art. 35 (a) (viii).*

A lease for a certain house, granted on a monthly rental, did not fix a term but stated that either party could terminate the tenancy on giving one month's notice.

*Held*, that the lease was not for a term of less than one year within the meaning of Art. 35 (a) (i) of the 1st Sch. to the Stamp Act but was for an indefinite period within the meaning of Art. 35 (a) (viii) of the 1st Sch. to the Act.

*Amolia v. Ibrahim Ishak, In re (1)*, dissented from.

*In the matter of Burmah Shell Oil Storage & Distributing Company of India, Limited (2)*, and *Mangal Puri v. Baldeo Puri (3)*, relied upon.

*Letters Patent Appeal from the order passed by Skemp J. on 25th April, 1938, in Civil Reference No. 28 of 1937, holding that the proper section applicable was section 35 (a) (i) of the Indian Stamp Act.*

M. SLEEM, Advocate-General, for Collector, Delhi.

AZIM ULLAH, for Plaintiff,

Nemo, for Defendant.

RAM LALL J.—A lease of a certain house in Delhi was granted on a monthly rental of Rs.30. The instrument did not fix a term but it was stated that either

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(1) I. L. R. (1919) 46 Cal. 804. (2) I. L. R. (1933) 55 All. 874 (F. B.)

(3) 1938 A. I. R. (All.) 304.

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party could terminate the tenancy on giving one month's notice. In a suit for rent, the above mentioned document was produced and the Small Cause Court Judge, who was trying the case, holding that it was a lease for a term of less than one year and therefore chargeable under Article 35 (a) (i) of the First Schedule of the Stamp Act, charged a duty of Rs.3 and a penalty of Rs.30 before admitting it into evidence.

The Chief Revenue Authority, Delhi, made a reference to the High Court under section 61 (1) of the Stamp Act, urging that the instrument in question was chargeable under Article 35 (a) (viii), together with penalty, amounting in all to a sum of Rs.247-8-0. This reference was disposed of by a learned Single Judge who, by his order, dated 25th April, 1938, held that the proper article applicable was 35 (a) (i) on the authority of *Amolia v. Ibrahim Ishak, In re* (1) and on a consideration of the language of section 106 of the Transfer of Property Act. The Chief Revenue Authority has come up in appeal, urging again that the document is a lease for an indefinite period and chargeable to duty as such.

On a general consideration of the language of the article it appears to me that the contention of the appellant must prevail. Article 35 (a) makes a distinction between leases which purport to be for a fixed term and those which do not specify a term. In the present case the tenant would continue in possession till his tenancy was put an end to by notice. Neither party could know beforehand at what moment of time such a notice would be given and so such a lease might continue for an indefinite number of years. It appears to me, therefore, that the present lease is clearly one which does not purport to be for a definite term.

Turning to decided cases the only decision that supports the contrary contention is *Amolia v. Ibrahim Ishak, In re* (1). In that case the agreement was to pay Rs.60 per month as rent and to pay it at Rs.2 per day. There was no stipulation for terminating the tenancy by notice and it might easily be construed that the intention of the parties was that after the first month the tenant would be allowed to hold over. It was held that such a contract would be deemed to be a lease from month to month in accordance with section 106 of the Transfer of Property Act, but without further discussion it was stated that the duty chargeable would be under article 35 (a) (i) of the Stamp Act. This case appears to me to be decided rather on the admissions of counsel as to whether or not a monthly tenancy existed, and not on any consideration of the question whether the contract was one for a definite period or not. Mulla and Pratt in their learned commentary on the Stamp Act (at page 239 of the third edition), point out that the failure of the Court in the Calcutta case to assess duty on a contract of lease for an indefinite period was "evidently an oversight."

In a Full Bench decision of the Allahabad High Court, reported as *In the matter of Burmah Shell Oil Storage & Distributing Company of India, Limited* (1) some railway land was given to an Oil Company and a monthly payment was to be charged for the use of this land. The Company was to construct certain permanent structures and in case of breach of any of the conditions specified, the transaction could be cancelled by giving seven days' notice to the Company and in any other case on three months' notice by either side. The lease in question expressly provided that no ten-

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ancy was being created. The question arose whether this document was a license or a lease and with what duty it was chargeable. It was held that it was a lease and further that the definition of 'lease' as contained in the Stamp Act was wider than that contained in the Transfer of Property Act. It was held, therefore, that even if this document did not amount to a lease under section 105 of the Transfer of Property Act, it was nevertheless a lease for the purposes of the Stamp Act. Regarding the duty chargeable it was held that the document was a lease which did not purport to be for a definite term. Though the Calcutta decision mentioned above was not specifically referred to, the conclusion arrived at by the Full Bench was contrary to that stated in the Calcutta case. In a very recent decision reported as *Mangal Puri v. Baldeo Puri* (1) the matter was more directly in issue and the Calcutta case referred to above (and on which the learned Single Judge mainly based his judgment) was specifically disapproved. In this case a lease had been granted with a stipulation, as in the present case under discussion, that the owner could get the house vacated by giving one month's notice. A Division Bench held that a monthly tenancy within the meaning of section 106 of the Transfer of Property Act had been created but it did not follow that the document in question was a lease for less than one year. The learned Judges went on to say:—

“A lease for less than one year means a lease for some specified period which is less than 12 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’ ”.

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(1) 1938 A. I. R. (All.) 304.

Referring to section 106 of the Transfer of Property Act, the learned Single Judge observed that it would be anomalous if a lease which contained no clause as to notice should be a lease from month to month, whereas a lease which contained a clause making the tenancy terminable by one month's notice should be a lease for an indefinite period. It appears to me that this argument does not touch the real question in issue. I am quite clear in my mind that a lease may be from month to month and yet be for an indefinite period. The language of the Stamp Act is perfectly clear and in my opinion it is only when a term of less than 12 months' duration is specified that a lease can be said to purport to be for such a period and therefore chargeable as such. Where no term is fixed, the document is *ex facie* one for an indefinite period.

Further, as pointed out in the Full Bench decision of the Allahabad High Court referred to above, even if a document is such that it could not be deemed to be a lease within the meaning of section 105 of the Transfer of Property Act, it would still come within the Stamp Act because the definition of "lease" in the Stamp Act is wider and more comprehensive than the definition of it in the Transfer of Property Act. The two Acts are not complementary of each other and where the language employed in one Act is perfectly clear I can see no reason for going to another Act for interpreting the term used in that Act.

For these reasons I would accept this appeal, but having regard to all the circumstances of the case I would make no order as to costs in the High Court.

Learned counsel for the respondent pointed out that the penalty which his client would have to pay

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was very heavy indeed, having regard to the subject matter of the suit. While we may entertain sympathy for the respondent in this matter, it appears to me that we have no power either to reduce or to remit the penalty imposed and the only remedy lies in a representation to the Chief Revenue Authority.

ADDISON J.—I concur.

A. K. C.

*Appeal accepted.*

### APPELLATE CRIMINAL.

*Before Young C. J. and Blacker J.*

UJAGAR SINGH AND OTHERS—Appellants,

*versus*

THE CROWN—Respondent.

Criminal Appeal No. 567 of 1938.

*Evidence of blood-stained nails — Medico-legal value thereof — Criminal Procedure Code (Act V of 1898), S. 510 — Written report of the Chemical Examiner — Admission as evidence without subjecting him to cross-examination — danger of.*

*Held*, that the evidence of blood-stained nails is not only of no value but may be extremely dangerous to innocent persons. It has frequently been given in the past as evidence corroborating an approver or as circumstantial evidence connecting an accused person with homicide. It may have led to the miscarriage of justice.

The danger of the provisions of s. 510 of the Code of Criminal Procedure, which allows the mere written report of the Chemical Examiner to be accepted as evidence in criminal cases without subjecting him to cross-examination, pointed out.

*Happu v. The King Emperor* (1), referred to.

*Appeal from the order of Lala Munshi Ram, Sessions Judge, Gurdaspur, dated 27th May, 1938, convicting the appellants.*