

before the District Court. No doubt the District Court would have to state in the probate that the will was proved before it, but so it must be deemed to have been, after the decision of this Court that it was established on the evidence. In order to execute the order of this Court a probate, (which is not, as the District Judge supposes, a decree of the Court, but "the copy of the will under the seal of the Court" (section 3, Act V of 1881)), has to be prepared and issued, which, under section 583, is the duty of the lower Court. We must, therefore, refuse the application that probate be granted by this Court, and direct the District Judge to grant it.

*Application rejected.*

### FULL BENCH.

*Before Mr. Justice Parsons, Mr. Justice Telang, and Mr. Justice Candy.*

PRALHA'D LAKSHMANRA'V NIKANE, PLAINTIFF, v. VITHU  
AND ANOTHER, DEFENDANTS.\*

*Stamp—Money-bond—Endorsement of transfer—Sections 13, 14 and 34 of  
the Indian Stamp Act (I of 1879).*

The endorsement of transfer written on a simple money-bond duly stamped requires a stamp, and can be stamped under section 34 of the Indian Stamp Act (I of 1879).

THIS was a reference made by Ráo Sáheb Sakháram Mahádev Karandikar, Subordinate Judge of Devgad in the Ratnágiri District, under section 49 of the Indian Stamp Act (I of 1879).

The defendants Vithu and Atma executed a simple money-bond in favour of one Rámshet Vitshet Khadaya, who subsequently transferred his interest in the bond to plaintiff Pralhád Lakshman Nikane. The instrument of transfer was written on the back of the impressed stamp-paper on which the principal bond was written. A question having arisen as to whether the instrument of transfer required to be stamped, the Subordinate Judge submitted the following question for decision:—

“(1) Whether the instrument of transfer on which the plaintiff has sued, can be stamped by this Court as per section 34 of the Stamp Act I of 1879.”

\* Civil Reference, No. 13 of 1892.

1892.

BAYA'BA'I  
v.  
SARASVATI-  
BA'I.

1892.

September 29.

1892.

PRALHÁD  
LAKSHMAN-  
RÁV NIKÁNE  
v  
VITHU.

The opinion of the Subordinate Judge was in the affirmative.

There was no appearance of parties.

TELANG, J. :—It appears to us that the endorsement of transfer in this case cannot be treated as falling within the exemption allowed by the proviso to section 13, which in terms extends only to “any endorsement which is duly stamped or is not chargeable with duty.” *Ex concessis* the endorsement in this case is *not* duly stamped and *is* chargeable with duty. It must, therefore, be held to fall under the principal clause of section 13, which forbids a second instrument being written upon a paper on which one instrument has already been written. The second instrument being thus written in contravention of section 13 must under section 14 be deemed to be unstamped. And then section 34 and its provisos, which apply to all unstamped instruments, whether actually or only constructively so, must come into operation. This appears to us to be the true construction of the sections. But in *In the matter of Hanmapa*<sup>(1)</sup> the opinion is expressed that the Collector ought to refuse to stamp the endorsement, because it is made in contravention of section 13. That seems to indicate that in such a case the power to set the matter right by the enforcement of a penalty, as provided elsewhere in the Act, does not apply. As at present advised, we are not prepared to go as far as this. It would be equivalent to adding another sanction to the rule laid down in section 13 besides the sanction provided in section 14. We think that that is not a correct construction of the Act. We have consulted Sargent, C. J., upon the point, and he authorizes us to say that he agrees in the view now expressed, and that in *Hanmapa's* case<sup>(1)</sup> it was not the intention of the Court to decide the point which has here arisen. The answer to the question put by the Subordinate Judge must be in the affirmative.

*Order accordingly.*

(1) I. L. R., 13 Bom., 281.