three brothers should enjoy Rs. 30, and Mahadaji Ramchandra Rs. 10 from generation to generation in *inám* right, and make the *vahivat*. We have no right left over this income. You may recover the assessment from the said tenants direct or through the village officers according to your pleasure. We have no right or title left to recover the assessment from those tenants. If the *mirási* right can be acquired through any circumstances over the lands held by the tenants, such right will belong to you. We have no *inám* right left over them at all."

The Judge of the lower Appellate Court was of opinion that this document required to be registered under section 17 (*b*) of the Indian Registration Act, 1877, and, as it was not, dismissed the suit. The point taken before us is whether the document does fall within clause (*b*) of section 17.

There can be no doubt that it assigns to the plaintiffs all the *inám* rights of the assignors over the lands held by the three *mirási* occupiers mentioned therein, including the right to recover the assessment fixed on them and the right of succession to the full ownership thereof should the *mirási* tenure on which they were held come or be brought to an end. As such it seems to us clear that it assigns a right, title, or interest in immoveable property. In *Madhavrav* v. *Jagannath*[1], it was held that registration was compulsory in the case of an assignment of the right to take the assessment, and in *Venkaji* v. *Shidramapa*[2], the assignment of the assessment of land and of its *vahivat* was held to fall within the wording and spirit of the definition of immoveable property contained in section 3 of the Registration Act.

The value of the interest assigned "in present or in future" is, in our opinion, more than one hundred rupees. It was the *inám* rights over land assessed at Rs. 40 a year that were assigned, and the value of such rights would be at least twenty years' purchase. If, as was done in *Nago* v. *Babaji*[3], the stamp on the document be taken as a guide to the unexpressed value of the claim to seniority, the stamp affixed, Rs. 16, would show a con-

(1) P. J. for 1889, p. 75. (2) (1894) 19 Bom., 663.
(3) (1884) 8 Bom., 610.

1900.

ANANDRAO v. JOTI.

sideration of some Rs. 1,500. We, therefore, confirm the decree with costs.

RANADE, J.:—The only point of law raised in this case is whether the *farikat* and the contemporaneous agreement of 1873 required registration. The Court of first instance held that the appellant-plaintiffs' claim, based on the *farikat* and agreement, was proved, and it awarded the claim. The District Court held that the *farikat* was inadmissible in evidence for want of registration under clause (*b*) of section 17 of the Act. It was contended before us that the *farikat* and the agreement only declared the appellants' *vadilki* rights, and did not create any interest which did not exist before. Looking at the wording of the document, I feel satisfied that this contention is without foundation. The words used are words of express grant, and it has not been contended that, before the partition, any *vadilki hak* was enjoyed by the appellants of the nature created by this grant. The declaration in this case must be construed in the sense of a document creating or assigning an interest. It is only where a declaration states a mere fact, as in *Sakharam* v. *Madan*[1] and also *Faki* v. *Khotu*[2], that the document requires no registration. Where a document is a declaration of will creating a definite change of legal relation to the property of the persons executing it, such a declaration is compulsorily registrable. In the present case, the executing party admitted the appellants' right to recover Rs. 40 from certain tenants who were assigned to them for *vadilki hak*. Independently of this document, the appellants could not prove their claim. The cases cited on appellants' behalf have no application. The document in *Gireedhur Doss* v. *Nitto Gopal Doss*[3] admittedly contained no transfer of interest, but simply showed what particular income was to be used by the Shebait for the service of the temple. The ruling in *Kedarnath Dutt* v. *Sham Lall Khettry*[4] was expressly based on the fact that the deposit of the title-deeds and advance of loans had taken place prior to the execution of the document. Where the equitable mortgage was not prior to the document, it was held that the latter was compulsorily registrable—*Jaitha Bhima* v. *Haji*

(1) (1881) 5 Bom., 232.
(2) (1880) 4 Bom., 590.
(3) (1872) 19 W. R., 291.
(4) (1873) 20 W. R., 150.

1900.

ANANDRAO v. JOTI.

Abdul(1). The case of *Nilava* v. *Rudraya*(2) related to a maintenance claim, and the document was in the nature of a family arrangement, and it was held that the value of the maintenance right was not the same as the value of the property itself. A claim for maintenance did not necessarily create a charge on the property—*Kalpagathachi* v. *Ganapathi Pillai*(3). When the property was worth more than Rs. 100, a partition deed relating to the division of the same must be registered—*Shankar* v. *Vishnu*(4)—even when mother and sons were parties to it—*Lakshmamma* v. *Kameswara*(5). The case of *Heramb'dev* v. *Kashinath*(6) related to an endorsement on a sanad, which endorsement was held not to create any interest, when the sanad was returned to the grantor. None of the rulings cited apply to the present case. The value of the interest created, being a claim to receive Rs. 40 a year, must at the lowest calculation exceed Rs. 100, and, therefore, the document was inadmissible in evidence for want of registration. The *takid* had no independent efficacy of its own. It was only a subsidiary document intended to give effect to the partition. Apparently, it has not been acted upon for more than twelve years since the document was executed. The District Court, therefore, very properly dismissed the claim. I would dismiss the appeal.

(1) (1886) 10 Bom., 634.
(2) (1875) 12 Bom. H. C. R., 141.
(3) (1889) 3 Mad., 184.
(4) (1876) 1 Bom., 67.
(5) (1889) 13 Mad., 281.
(6) (1889) 14 Bom., 472.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

RAGHO SHITARAM, PLAINTIFF, *v.* HARI, DEFENDANT.*

1900.
March 15.

Indian Limitation Act (*XV of* 1877), *Sec.* 20—*Part-payment of principal—Payment in kind.*

A payment may be made not only in the current coin of the realm, but in any other medium that the creditor may choose to accept.

Where goods are delivered by the debtor and taken by the creditor in payment either of principal or interest as such, such delivery would be a good payment of principal or interest, as the case may be, so as to extend the period of limitation under section 20 of the Limitation Act (XV of 1877).

* Civil Reference, No. 4 of 1900.