

must be taken as made under it; and that, consequently, the appeal allowable by the new Code against similar orders being limited to orders actually made under the provisions of this latter Code, was not available. 1879  
ELAHU BUKSH  
v.  
MARACHOW.

In this case there was nothing pending in the lower Appellate Court on the 1st of October 1877, and the application to the Judge on the 21st June 1878 was after what now stands as the final decree in the suit, namely, the dismissal of the appeal and confirmation of the decree of the first Court on the 31st May preceding.

It seems to us that the order of the 21st June 1878 was made under the Code of 1877, and is, therefore, open to appeal. Then unquestionably the order of the Judge was wrong, for he himself gives a good reason why the appeal should have been reinstated, and none against it.

The appeal will, therefore, be allowed with costs, and the Judge will be directed to readmit the appeal.

*Appeal allowed.*

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Jackson, and  
Mr. Justice Pontifex.

IN THE MATTER OF ACT XVIII OF 1869 AND OF THE UNCOVENANTED  
SERVICE BANK (LIMITED).

1879  
Feb. 5 & 13.

*Bank Memorandum—Receipt—Act XVIII of 1869, sched. ii, cl. 7.*

A bank memorandum informing one of their customers that money has been paid to his account by a third person and has been credited to that account, does not require to be stamped under art. 7, sched. ii, of Act XVIII of 1869.

THIS was a case referred to the High Court under s. 41 of Act XVIII of 1869, by order of the Board of Revenue, North-Western Provinces.

It appeared that the Commissioner of Stamps, North-Western Provinces, on the 13th October 1878, forwarded to the Manager

1879

IN THE  
MATTER OF  
ACT XVIII  
OF 1869 AND  
OF THE UN-  
COVENANTED  
SERVICE  
BANK.

of the Uncovenanted Service Bank Rs. 300, to be placed to the credit of Captain N. Cotton. The Bank, in a written reply, enclosed an office memorandum, to be forwarded to Captain Cotton, which memorandum intimated that they had received Rs. 300 from the Commissioner of Stamps to the credit of his account. Neither of these papers bore any receipt stamp. The Commissioner of Stamps, upon receiving the letter and memorandum in question, forwarded them to the Assistant Commissioner of Almora. Criminal proceedings were at first taken against the Bank, but were subsequently stayed in order that the case might be referred to the Board of Revenue.

The Board of Revenue referred the question in the following form to the High Court, *viz.* :— Whether a bank memorandum, purporting to intimate that money remitted by one person had been credited to the account of another, requires under cl. 7, sched. ii, of Act XVIII of 1869, an adhesive stamp of one anna to be affixed thereon ?

No one appeared to argue the question.

The opinion of the Court was delivered by

GARTH, C.J. (JACKSON and PONTIFEX, JJ., concurring).— We think that the Board of Revenue, North-Western Provinces, have not taken a correct view of the provisions of the Stamp Act. Before we look at s. 15 to see what instruments under the head of “receipts” are exempt from duty, we must first look to sched. ii to see whether the instrument in question is by s. 4 *chargeable with duty*. It could only be chargeable under art. 7 if it were “a receipt or discharge given for or upon the payment of money in *satisfaction of a debt*.”

If, therefore, the Rs. 300 was paid in this instance by Mr. Robertson to Captain Cotton’s account otherwise than in satisfaction of a debt, it would not be chargeable at all; and we find nothing in the facts stated or upon the instrument itself, to show that it was paid in satisfaction of a debt.

But even assuming that it was so paid, we consider that the document in question was not a “receipt or discharge” within the meaning of the Act, because it was not given to the party who paid the money.

In this instance, no receipt appears to have been given to the Commissioner of Stamps, and the document in question is nothing more than the ordinary intimation, which the Bank gives to its customer, that a certain sum has been paid in by the Commissioner of Stamps to his credit.

If the instrument in question were a receipt within the meaning of art. 7, then in a case where it would be proper for the Bank to give notice of a particular payment to several different people, each one of the notices so given would have to be stamped as a receipt.

It seems to us perfectly clear, that this was never the intention of the Stamp Act; and for these reasons we are of opinion that the instrument in question is not chargeable with any stamp duty.

1879  
 IN THE  
 MATTER OF  
 ACT XVIII  
 OF 1869 AND  
 OF THE UN-  
 COVENANTED  
 SERVICE  
 BANK.

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## FULL BENCH.

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*Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice L. S. Jackson,  
 Mr. Justice Markby, Mr. Justice Ainslie, and Mr. Justice Mitter.*

LALLA NOWBUT LALL (PLAINTIFF) *v.* LALLA JEWAN LALL AND  
 OTHERS (DEFENDANTS).\*

1878  
 June 3.

*Coparceners—Mahomedan Law—Right of Pre-emption.*

There is no rule of Mahomedan law giving one coparcener any right of pre-emption where another coparcener is the purchaser.

*Moheshee Lall v. G. Christian* (1) followed; *Roshun Mahomed v. Muhomet Kuleen* (2) distinguished.

THIS was a suit to establish a right of pre-emption.

Lalla Nowbut Lall (the plaintiff), Jewan Lall and Tirput Lall (defendants Nos. 2 and 3), were each the owners of a 4-pie share in a certain mouza. On the 12th January 1875, Tirput Lall sold his share in the said mouza to one Rowshun Lall

\* Special Appeal, No. 1783 of 1877, against the decree of E. Drummond, Esq., Judge of Zilla Sarun, dated the 31st of May 1877, modifying the decree of Moulvi Mahomed Natiq, Munsif of Sewan, dated the 27th May 1876.

(1) 6 W. R., 250.

(2) 7 W. R., 150.