

MANU/BH/0233/1917

Equivalent Citation: 41Ind. Cas.693

IN THE HIGH COURT OF PATNA

Civil Reference No. 17 of 1917

Decided On: 03.07.1917

Appellants:**Mohamad Sadik**

Vs.

Respondent:**Amiya Nath Dutt**

Hon'ble Judges/Coram:

Edward Maynerd Des Champs Chamier, Kt., C.J., Chapman and Jwala Prasad, JJ.

Counsels:

For Crown: Sultan Ahmed, Government Advocate

JUDGMENT

1. This is a reference under section 60 of the Indian Stamp Act. The learned Subordinate Judge making the reference suggests that the stamp duty payable upon the instrument is that payable upon a bond. A bond has been interpreted in the Act to include, among other things, an instrument attested by a witness not payable to order or bearer, whereby a person obliges himself to pay money to another. The document is an instrument whereby a person has obliged himself to pay money to another and it is not payable to order or bearer. In order to determine whether it is attested by a witness or not it is permissible to look only at the document itself. Evidence cannot be referred to. At the foot of the document there occur the letter and words "W by Chintamon Jena, Mirya Bazaar, Cuttack" with the date. "W by" may mean either written by or witnessed by. Of these two possible alternatives that more favourable to the executants must be preferred, for a question of penalty is involved. We accordingly adopt the alternative 'written by.' The occurrence of the words "written by" followed by a name affords no foundation for saying that the instrument has been attested by a witness. It is probably merely the certificate of the scribe that the document was written by him. This view is supported by the fact that this writing occurs at the bottom of the document and not at the top where the signatures of the executants are. We find that the document was not attested by a witness and we accordingly decide that the instrument is not a bond and that the stamp of one anna which has been affixed to it is sufficient.

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