

REFERENCE UNDER THE STAMP ACT.

Before Rankin C. J., C. C. Ghose and Buckland JJ.

In re COOKE & KELVEY.*

1932

Feb. 2.

Stamp—Reference to High Court, when competent—Indian Stamp Act (II of 1899), ss. 57 (1), 59 (2).

Unless the Revenue-authority has still, resting upon it, the duty of disposing of a case, it is not intended by the statute that it should have a right to make a reference to the High Court.

Reference under Stamp Act (1) relied on.

Where the Collector under section 31 of the Act has adjudicated on the question of stamp duty chargeable on an instrument, the Board of Revenue has no controlling power over the Collector before the instrument is impounded for failure to pay the duty and there is no duty imposed on the Board with regard to it.

REFERENCE UNDER THE INDIAN STAMP ACT.

The circumstances in which this reference was made are sufficiently set out in the judgment.

Advocate General, N. N. Sircar (with him *Standing Counsel, A. K. Roy*) for the Board of Revenue. Section 56 (1) of the Act does not apply to Chapter III of the Act, but only to Chapters IV and V. And section 59 lays down the procedure.

In this case, the Collector has made the order, but the document has not yet been impounded. At this stage, it is not competent for the Board to interfere and to refer the case to the High Court. *Reference under Stamp Act (1)*; *Stamp Reference by the Board of Revenue (2)*; *Usuf Dadabhai v. Chand Mahomed (3)*.

Pugh (with him *S. K. Gupta*) for *Cooke & Kelvey*. Under section 40 of the Act, there is a period for payment and the Board can interfere

*Reference under s. 57(1) of the Indian Stamp Act.

(1) (1901) I. L. R. 25 Mad. 751 and (2) (1917) I. L. R. 40 All. 128, 133, 752.

(3) (1925) 27 Bom. L. R. 1273, 1275.

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during this period. When the case is under section 31, the certificate of the Collector is conclusive and after that the Board has no right to interfere; but before that is completed it can come in.

This is a pending case and the Board has referred it, so your Lordships have no option but to decide it.

The Collector is under the direct control of the Board of Revenue, so the Board can interfere and state a case when it is requested to do so.

[RANKIN C. J. I do not see that the Chief Revenue-authority has anything to dispose of, in this case].

The Board has power to refer any pending case.

RANKIN C. J. In this case, a reference has been made to this Court under section 57 of the Indian Stamp Act by the Board of Revenue in this province. It appears that a certain document, after it had been executed, was brought to the Collector under section 31 of the Stamp Act. It was brought with the view of having the opinion of the Collector as to the duty with which the instrument was chargeable and it became and was the duty of the Collector to determine the duty with which, in his judgment, the instrument was chargeable. On the 22nd of July, 1930, the Collector discharged his duty under section 31 by making an order to the effect that the document was chargeable under Article 40, clause (b) and giving his reasons for holding that it did not come under clause (c) of that Article. He was also of opinion that the instrument was chargeable under Article 23 and that the total stamp duty to be charged was Rs. 16,983-12. This decision of the Collector was apparently somewhat disappointing to the subjects and they were not minded to pay the amount which had been determined in order to obtain an endorsement franking the document under section 32 of the Act. The subjects, accordingly, applied to the Board of Revenue, asking the Board of Revenue to over-ride or interfere with the ruling of the Collector and come to a

more favourable decision. The Board of Revenue, thereupon, purported to exercise its power under section 57 of the Act. The power there given is that "the Chief Controlling Revenue-authority may state "any case referred to it under section 56, sub-section "(2), or otherwise coming to its notice, and refer such "case, with its own opinion thereon, to the High "Court." The present is not a case which can be said to have been referred under sub-section (2) of section 56, and it must come under section 57, if at all, by reason of the words "or otherwise coming to its notice." Those words, it is true, are somewhat wide and might well be held to cover a case such as the present, were it not that when one attends to the terms of the following sections and to the scope of the statute one finds that the purpose of stating a case to the High Court and the High Court deciding the question raised thereby is entirely a practical purpose. "The "Revenue-authority shall, on receiving such copy, "dispose of the case conformably to such judgment." Now, it is well held in all the High Courts that, unless the revenue-authority has still resting upon it the duty of disposing of a case, it is not intended by the statute, that it should have a right to make a reference to the High Court. The opinion of the High Court is merely to guide it in disposing of an actual and concrete case. Some of the cases which have, in times past, been stated to the High Court have failed to answer this test satisfactorily and of these some have failed because of the fact that the particular case was entirely disposed of and completed before the reference was made: [*Reference under Stamp Act* (1)]. In the present case, we have to consider a somewhat different objection under the same heading, because we have to investigate whether the Chief Controlling Revenue-authority had begun to have any duty whatsoever in the matter of the particular instrument, which is now before us. When we enquire into that, we find it very noticeable that the general power of control given to the Chief

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Controlling Revenue-authority by sub-section (1) of section 56 includes powers exercisable by the Collector under Chapter IV and Chapter V of the Act and it plainly does not include powers exercisable under Chapter III. The next sub-section deals not only with sections 40 and 41 of Chapter IV, but gives the Collector power when acting under section 31 to state a case to the Board of Revenue, if he is in doubt as to the proper decision. In the present case, however, the Collector did not state a case to the Board of Revenue and, therefore, the second sub-section of section 56 did not operate to impose any duty upon the Board of Revenue with reference to this instrument. Turning, therefore, to the consideration of the case under section 31, it has to be observed that under that section, the instrument may or may not have been executed and it may be brought to the Collector merely for the purpose of getting a decision. It may be that, after the decision, the parties will come to the conclusion that the instrument should not be entered into at all. It may be that they will still come to the conclusion that the instrument should be entered into and that other steps will have to be taken. The present instrument is an instrument which was executed and, when it was brought to the Collector for his opinion, the subjects were in this position that either they could go on and pay under section 32, what the Collector required or they would be liable to have the Collector exercise his powers under section 33 to impound the instrument and commence proceedings under section 40 to compel payment of the amount chargeable. Without complying with the Collector's order and without attempting to get a certificate under section 32 which could only be got by a payment, the subjects in this case applied to the Board of Revenue omitting to notice that, under section 56, the Board of Revenue had no controlling power over the Collector at that stage. It seems that they were threatened that the document would be impounded; but the document has not so far been impounded.

There is, therefore, in my judgment, no duty shown for performance by the Board of Revenue entitling the Board of Revenue to ask us to decide the matter. I am quite clear that the wide words "or otherwise coming to its notice" can only be given effect to in cases where the concluding words of section 59 can also be given effect to. This somewhat narrow and technical difficulty is one which is capable no doubt of removal. It would be very easy for the Collector to impound the document and a case to be commenced under section 40; and, according to the ruling given in the case of *Reference under the Stamp Act* (1), the Board of Revenue would be able to intervene in such a proceeding if it intervened before it was completed. The learned Advocate-General, however, in this case prefers that the matter should be dealt with strictly and that we should not decide this Reference without having proper jurisdiction and he prefers that proceedings for impounding the instrument may be taken and that, under section 40 and other relevant sections of the Act, the parties should be given their rights. It may be that, in these circumstances, the Board of Revenue will not think it necessary—and no party will think it necessary—to refer the matter for the decision of this Court.

In this view, it appears to me that the present Reference is not competent and that we ought, accordingly, to reject it on that ground. There will be no order as to costs.

GHOSE J. I agree.

BUCKLAND J. I agree.

Attorney for Board of Revenue: *Government Solicitor*.

Attorneys for Cooke & Kelvey: *Morgan & Co.*

S. M.

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