

## CIVIL REVISION.

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*Before Guha and Bartley J.J.*

RADHA GOBINDA SEN

1936

July 21, 31.

v.

RAM BRAHMA MANDAL.\*

Vakálatnámá—Vakálatnámá, *how to be stamped—Indian Stamp Act (II of 1899), s. 5.*

A *vakálatnámá* containing a stipulation to remunerate the pleader in advance is one indivisible contract and does not comprise of two distinct matters within the meaning of s. 5 of the Indian Stamp Act. It is, therefore, not chargeable both under the Court-fees Act and the Indian Stamp Act, but under the former only.

There cannot be any equitable construction of a fiscal statute and the Crown seeking to recover a tax must bring it within the letter of the law. In case of doubt, the law should be construed strictly in favour of and beneficial to the subject.

*Killing Valley Tea Company, Ltd. v. Secretary of State for India* (1) referred to.

CIVIL REVISION on a petition of the plaintiffs.

The material facts of the case and the arguments appear sufficiently from the judgment.

*Rama Prasad Mookerjee, Mohit Kumar Mukherji*  
and *Uma Prasad Mookerjee* for the petitioner.

The Assistant Government Pleader, *Bijan Kumar Mukherjee*, for the opposite party.

*Cur. adv. vult.*

\*Civil Revisions, Nos. 451 and 459 of 1936, against the orders of Tridib Chandra Banerji Second Munsif of Krishnagar, dated Mar. 19, 1936 and A. M. Ahmad, District Judge of Nadia, dated Mar. 16, 1936, respectively.

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The judgment of the Court was as follows:—

The question for consideration in these cases is whether *vakâlât-nâmâs* containing stipulations to the following effect are required to be stamped as agreements under the Indian Stamps Act as also as *vakâlât-nâmâs* under the Court-fees Act:—

1. The pleader is to receive certain fees for work to be done for his client in Court in a case before the Court in which the *vakâlât-nâmâ* is filed.
2. The pleader is not bound to appear and act if fees are not paid in advance.

In view of the provisions contained in the Indian Stamp Act, an instrument comprising or relating to several distinct *matters* is chargeable with the aggregate amount of duties with which separate instruments each comprising or relating to one of such matters would be chargeable (s. 5). In applying this provision of the law, there can be no doubt that what has to be taken into account is what the parties concerned purported to provide for, by an instrument, and not whether any particular provision was necessary or might have been dispensed with, the question being whether a deed contained two distinct matters, as specifically mentioned in s. 5 of the Indian Stamp Act. Two matters, however, are considered to be distinct, if one of them is subsidiary to another contained in the same document; the test being whether one is incidental and accessory to the other. The position has to be kept in view and what has to be considered is whether any instrument contains distinct matters and not whether it contains two distinct contracts.

In applying the rules deducible from the provision contained in s. 5 of the Indian Stamp Act, to which reference has been made above, the canons of construction applicable to fiscal statutes must be kept in view: and in case of doubt, the construction should be construed strictly in favour of and beneficial to the subject. There cannot be any equitable construction of a fiscal statute; and the Crown seeking to recover a tax must bring it within the

letters of the law; otherwise, the subject is free [see *Killing Valley Tea Company, Ltd. v. Secretary of State for India* (1)]. The intention to tax a particular instrument in different ways must appear in clear and positive words.

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In the case before us, the stipulation to remunerate the pleader in advance is a necessary part of the *vakâlâtnâmâ*, and was not a separate agreement or a separate *matter*, as contemplated by s. 5 of the Indian Stamp Act. The *vakâlâtnâmâs* in question containing one indivisible contract were chargeable under Art. 10 (Sch. II) of the Court-fees Act; and there were no such distinct matter contained in them to which the provisions of the Indian Stamp Act relating to agreements were applicable. On proper construction of the *vakâlâtnâmâs* before us, there was no doubt that the instruments do not comprise or relate to several distinct matters, and there can be no question of charging them with the aggregate amount of duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under the law. As indicated sufficiently clearly, there is no room for any doubt as to the proper construction either of the terms of the *vakâlâtnâmâs* or of the provisions of the law applicable to the same; and even if there was any room for doubt, in the absence of any definite provision of the law, the *vakâlâtnâmâs* are not chargeable both under the Court-fees Act and the Indian Stamp Act, as held by the learned Judges in the Courts below.

The Rules are made absolute. The orders against which the Rules were directed are set aside. There is no order as to costs in the rules.

*Rules absolute.*

A. C. R. C.