

These second appeals having come on for final hearing their Lordships accepted the finding with regard to the relinquished lands, and, with regard to the stipulation not to cut trees delivered judgment as follows:—

APPA RAU
v.
RATNAM.

We are not able to support the finding of the District Judge, and it appears to us that he has put the burden on the wrong side. *Prima facie* a tenant would not be at liberty to cut down fruit trees on his holding, and by so doing would considerably impair the value of the property. The fact that for ten years this condition in the pattas had been accepted would be evidence of a recognized custom consistent with the usual rights of a landlord and it is shown that the prohibition does not extend to shrubs and small trees which are generally at the disposal of a tenant for the purposes of his holding. With this modification the finding of the Lower Appellate Court is accepted. We direct that each party do bear his own costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

RAINIER (PLAINTIFF),

v.

GOULD (DEFENDANT).

1889.
Nov. 11, 14.

Stamp Act—Act I of 1879, sched. I, art. 5(a)—Agreement or memorandum of agreement relating to the sale of shares—Agreement by correspondence.

Correspondence having passed between the plaintiff and defendant relating to the sale of shares in a certain company by the plaintiff to the defendant, and the sale not having been carried out, the plaintiff in a suit for damages against the defendant sought to prove an agreement for sale from the letters, none of which were stamped:

Held, the letters, though unstamped, were admissible as evidence of an agreement, since they did not constitute an agreement or a memorandum of agreement.

CASE stated under section 69 of the Presidency Small Cause Court Act by J. W. Handley, Chief Judge of the Madras Court of Small Causes, in suit No. 20399 of 1888.

The case was stated as follows:—

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" This was a suit for damages for breach of a contract on the part of defendant to purchase from plaintiff fifty shares in the South Indian Ice Company (Limited). Defendant, amongst other pleas, denied the contract.

" At the first hearing before the Acting Chief Judge, Mr. Scharlieb, certain letters (exhibits A to E) were proposed to be put in evidence on behalf of plaintiff in proof of the contract. For defendant these letters were objected to as inadmissible in evidence on the ground that, if they were put forward as constituting a contract for the sale of the shares, they or one of them required a one-anna stamp under article 5(a), schedule I of the Stamp Act (I of 1879), which stamp must have been affixed at the time of execution; and that the stamp duty required being one anna, the documents could not be received in evidence on payment of the stamp and penalty under the provisions of section 34 of the Stamp Act, instruments chargeable with such duty being expressly by the words of the section excluded from the benefit of those provisions.

" One of the letters (exhibit C), when produced by plaintiff, bore a one-anna adhesive stamp, which, however, it was admitted was affixed to it after it came into plaintiff's hands. It was contended at one time on behalf of plaintiff on the authority of a Bombay case (*Bhauram Madan Gopal v. Rammarayan Gopal*(1) that this was a sufficient stamping to render the document admissible in evidence, but this contention was not much insisted upon, and I do not consider it necessary to refer that point to the High Court.

" Mr. Scharlieb after hearing the evidence of plaintiff held that the letter (exhibit D) required a one-anna stamp, and, not being so stamped, was inadmissible in evidence, and that the contract could not be proved without that letter, and accordingly he dismissed the suit.

" Upon an application to the Full Court for a new trial, it was held that none of the letters in question required a stamp under article 5(a) of schedule I of the Stamp Act, and that they were, therefore, admissible in evidence in proof of the contract, but that even if this opinion were not well founded and one or more of the letters were inadmissible on this ground, plaintiff would still be entitled to prove the contract by the written admissions of the

(1) 12 Bom. H.C.R., 208.

defendant. A new trial was accordingly ordered, leave being given to plaintiff to amend the plaint.

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“ Upon the new trial before me I found that the contract, as alleged in the amended plaint, was proved by the letters A to E, or, if they were not admissible in evidence by the written admissions of defendant, that plaintiff was ready and willing to complete the contract, and that there was no unreasonable delay on his part in obtaining the share certificates, and that defendant was not justified in rescinding the contract, and that plaintiff had proved his damages as charged in the plaint. I gave judgment, therefore, for plaintiff for the amount claimed and costs, but (at the request of defendant’s attorney), contingent upon a case to be stated for the opinion of the High Court upon two questions of law raised in the case, viz.,

- (1) Do the letters (exhibit A to E) or any of them require a stamp under article 5(a), schedule I of the Stamp Act ?
- (2) If all or any of the letters in question are or is inadmissible in evidence on account of not bearing a stamp, is it open to plaintiff to prove the contract by the written admissions of defendant ?

“ As to (1)—it has been a surprise to me to find that there are no decisions of the Indian Courts upon the effect of the present Stamp Law upon a series of letters put forward in proof of a contract; at least none have been quoted in the argument, and I can find none. The present Stamp Act omits the provision, which found a place in the preceding Act (XVIII of 1869, sched. II, art. 2), and in previous Stamp Acts, that, when several letters constitute an agreement, it is sufficient if any one of them is properly stamped. I believe that, notwithstanding this omission, it has still been the practice in the Courts of this Presidency at any rate when a series of letters is tendered in evidence in proof of a contract to require that the stamp duty and penalty be paid on one of them. It seems to me doubtful whether this practice is correct,—whether a series of letters of this kind can be said to be an ‘agreement or memorandum of an agreement’ within the meaning of the Stamp Act. The question has to be faced and decided in a case like the present where the stamp (if any) required being a one-anna stamp, the document cannot be admitted on payment of penalty. The difficulty to my mind is that if such a series of letters is an ‘agreement or memorandum

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of an agreement' within the meaning of the Stamp Act, then the requirements of that Act as to the time of stamping instruments cannot be complied with. Section 16 requires that all instruments executed in British India shall be stamped before or at the time of execution. Now take the simple case of two letters—a proposal and an acceptance. At the time of execution by the proposer it is impossible that the instrument should be stamped because there is then no agreement between the parties and consequently there can be no written agreement or memorandum of an agreement to stamp. So in the case of a series of letters introducing variations in the terms of the original offer or acceptance, it is not until the last letter of the series that there is an agreement between the parties, and then it is impossible to stamp the instrument at the time of its execution by one of the parties. In the present case, for instance, Mr. Scharlieb held, and I think quite rightly, that there was no contract till the letter D was written by the plaintiff. How then could this series of letters or any of them have been stamped as an agreement or memorandum of an agreement at the time of its execution by defendant. Another difficulty is that, even in the case of a letter finally accepting an offer, it cannot be said that there is a complete agreement between the parties at the time of its execution, because the previous offer may be retracted at any time before the acceptance is put in course of transmission to the proposer. These and other difficulties and the fact of the omission of the above mentioned provision from the present Stamp Act suggest to me that by an 'agreement or memorandum of an agreement' is meant one document embodying the agreement of the parties, and that it was not the intention of the legislature to require that one or more of a series of letters, which may be evidence of a contract, should be liable to stamp duty.

"As to question (2) the Evidence Act, sections 22 and 65(b), seems to embody the doctrine of the English cases of *Slatterie v. Pooley*(1) and many others that the admissions of a party to the suit are always evidence against him, even though they relate to the contents of a document which is not produced or is not admissible in evidence, with this variation that the admission must be a written one."

(1) 6 M. & W., 664.

Exhibit A—E were as follows :—

EXHIBIT A.

18, MOUNT ROAD,
MADRAS, 28th May 1888.

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DEAR SIR,

I am informed you wish to part with your shares in the South Indian Ice Company at 20 per cent. discount or more. Please inform me if this is correct, as I should feel inclined to buy.

Yours faithfully,
HORACE J. GOULD.

EXHIBIT B.

29th May 1888.

DEAR SIR,

In reply to your note, I have fifty shares of the Ice Company, which, in spite of the very favorable prospects of that company, I, for other reasons altogether apart, wish to sell, and in order to sell quickly, will sell at a loss.

On the above shares, I have paid Rs. 37-8-0 each, or altogether Rs. 1875-Rs. 12-8-0 more per share is payable next month.

I am prepared to let you have the above shares at the price you mention, viz., 20 per cent. off what I have paid or for Rs. 1,500 cash. Kindly let me know whether this is settled.

Yours faithfully,
H. RAINIER.

EXHIBIT C.

18, MOUNT ROAD,
MADRAS, 30th May 1888.

DEAR SIR,

In reply to your note, I write to say I am prepared to take your shares at Rs. 2,000, being 20 per cent. off Rs. 2,500, the original price of shares.

Yours faithfully,
HORACE J. GOULD.

EXHIBIT D.

MADRAS CLUB,
31st May 1888.

DEAR SIR,

I accept your offer of Rs. 2,000 for my 50 shares South Indian Ice Company, Limited, fully paid.

I have as previously stated paid only Rs. 37-8-0 per share at present for the above shares, leaving Rs. 12-8-0 per share payable, or altogether Rs. 625; if then you hand me your cheque for Rs. 1,375 in exchange for my transfer deed I presume it will be all right.

Perhaps my bankers had better arrange it with yours.

You are probably aware that scrip of shares is not yet issued pending final call payable next month (June).

RAINIER Kindly say to whom my bankers (National Bank, India,) shall send the bill and
 v. transfer for payment.
 GOULD.

I am yours truly,
 H. RAINIER.

EXHIBIT E.

ANDERSON'S ROAD,
 NUNGAMBAKAM, 2nd June 1888.

DEAR SIR,

My Bankers are the Bank of Madras, and I have written them to take over from you the fifty shares in the South Indian Ice Company. I shall be glad if your Bankers will arrange matters with mine.

Yours faithfully,
 HORACE J. GOULD.

The *Advocate-General* (Hon. Mr. *Spring Branson*) for defendant.

Exhibit D, a letter from plaintiff to defendant, dated 1st May 1888, shows that the contract was completed, and also states that the scrip had not been issued. It completes the proposal and acceptance. See section 7, Contract Act and *Hebb's case*(1). It should accordingly have been stamped under schedule 1, clause 5(a). As to the argument of the learned Chief Judge, I say, the admissions referred to really form the contract, and the want of a stamp prevents them from being proved. See *Arunachellum Chetty v. Olagappah Chetty*(2), *Arumuga Kola-thairian v. Kolandai Semandan*(3), and *Sennandan v. Kollakiran*(4), where the learned Judges distinguished *Golap Chand Marcarce v. Thakurani Mohokoom Kooarce*(5) (where a decree was passed on the original consideration for which an unstamped promissory note had been given) and followed *Marine Investment Company v. Heaviside*(6) which also governs this case, see per Lord Cairns at p. 684 of the report, compare also *Muthalagan Ambalam v. Ramanadhan Chetti*(7), where as here the terms were reduced to the form of a document, and *Valiappa v. Mahomméd Khasim*(8), and see *Varada v. Krishnasami*(9) (upon the corresponding provisions of the Registration Act, 1864), and *Pothi Reddi v. Velayuda Sivan*(10), *Damodar Jagannath v. Atmaran Babaji*(11),

(1) L.R., 4 Eq., 9.

(3) 4 Ind. Jurist, 499.

(5) I.L.R., 3 Cal., 314.

(7) 4 Ind. Jurist, 568.

(9) I.L.R., 6 Mad., 117.

(11) I.L.R., 12 Bom., 443.

(2) 4 M.H.C.R., 312.

(4) I.L.R., 2 Mad., 208.

(6) L.R., 5 P.C., 624.

(8) I.L.R., 5 Mad., 166.

(10) I.L.R., 10 Mad., 94.

Jethibai v. Ramchandra, Narottam(1), *Benarsi Das v. Bhikkhari Das*(2).

Evidence Act, ss. 22, 65, must be subject to the rule in the *Marine Investment Company v. Heaviside* (*supra*), and if you cannot prove the contract at all directly, you cannot prove it indirectly by proof of admissions.

Mr. W. Grant for plaintiff.

In Act X of 1862, sched. A, art. 1, there was a note that if two or more letters were offered in evidence, it was sufficient if one be stamped. In subsequent Acts this note has been omitted, probably because it was impossible to say which letter should be stamped or when. A contract evidenced by letters is not "a written contract." A contract to be inferred from correspondence is not reduced to a document. Is the person who *makes* the offer to put the stamp to protect himself lest the acceptance should be without one? Letter C should be stamped, if any, but the plaintiff could not stamp it; in fact none of the letters here was written as the contract between the parties, though they evidence it. A man's admissions are evidence against him although contained in a writing not necessarily admissible for all purposes, *Iggullen v. May*(3), *Farr v. Price*(4), *Earle v. Picken*(5), *The King v. The Inhabitants of Wrangle*(6), *Newhall v. Holt*(7), *Slatterie v. Pooley*(8), and section 65(b) was never intended to vary the English law that a party's admissions were evidence against him. *Duchess of Kingston's case*(9), *Barker v. Birt*(10). See *Teignmouth and General Mutual Shipping Association in re*(11), for what amounts to sufficient admission of liability in books of policy of insurance.

Moreover an equitable construction should be put on fiscal legislation, see *per Lord Cairns in Partington v. The Attorney-General*(12), and see *per Esher M. R. in Commissioners of Inland Revenue v. Angus and Company*(13). The tax is imposed on the instrument, not on the transaction, therefore if there is a transfer apart from instrument, the section does not apply.

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| (1) I.L.R., 13 Bom., 484. | (2) I.L.R., 3 All., 717. |
| (3) 7 T.R., 241. | (4) 1 East, 55 (1800). |
| (5) 5 Carrington & Payne, 542. | (6) 2 A. & E., 514. |
| (7) 6 M. & W., 662. | (8) 6 M. & W., 664. |
| (9) 2 S.L. Cases, 785. | (10) 10 M. & W., 61. |
| (11) L.R., 14 Eq., 148. | (12) 4 Eng. & Irish App. Cases, 122. |
| (13) 23 Q.B.D., 579. | |

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I rely also on *Muttukaruppa Kaundan v. Rama Pillai*(1), *Rajah Lakshmi Chelliah Garu v. Krishna Bhupati Devu*(2). *Sernandan v. Kollakiran*(3), does not apply for I am not proposing to give secondary evidence of any document, but original evidence, admissions—*Valiappa v. Mahommed Khasim*(4) only held a plaintiff must succeed if at all on the case he sets up and see *Kopasan v. Shamu*(5). *Pothi Reddi v. Velayuda Sivan*(6), does not apply as the contract has not been reduced to the form of a document; see illustrations to section 91, Evidence Act.

How if contract is made 'by telegrams? What can be stamped? *Arunachellum Chetti v. Olagappah Chetti*(7) was also referred to.

Taylor on Evidence, page 361 letters are evidence of agreement, not the agreement itself. Section 22, Evidence Act, only provides for oral admissions, but there are other kinds: section 17.

The *Advocate-General* in reply referred to *Smith's Case* (8).

JUDGMENT:—This is a case stated for the opinion of the High Court by the Chief Judge of the Madras Court of Small Causes under section 69 of the Presidency Small Cause Act.

The suit was one for damages for breach of contract on the part of defendant to purchase from plaintiff fifty shares in the South Indian Ice Company (Limited), certain letters (A to E) were proposed to be put in evidence to prove the contract, but objection was raised on the ground that if they were put forward as constituting a contract for the sale of the shares, they or one of them required a one-anna stamp under article 5(a), schedule I of the Stamp Act I of 1879.

The questions referred to the High Court by the learned Chief Judge are—

- (1) Do the letters (A to E) or either of them require a stamp under article 5(a), schedule I of the Stamp Act?
- (2) If the letters in question or any of them are or is inadmissible in evidence on account of not bearing a stamp, is it open to plaintiff to prove the contract by the written admissions of the defendant?

(1) 3 M.H.C.R., 158.
(3) I.L.R., 2 Mad., 208.
(5) I.L.R., 7 Mad., 440.
(7) 4 M.H.C.R., 312.

(2) 7. M.H.C.R., 6, 21.
(4) I.L.R., 5 Mad., 166.
(6) I.L.R., 10 Mad., 94.
(8) L.R., 4 Ch. App., 611.

Under article 5(a) of schedule I, the "description of instrument" rendered liable to a stamp duty of one anna is an agreement or memorandum of an agreement relating to the sale of shares in any company. From the language of the schedule it might be inferred that what the legislature intended to make liable to duty was some instrument, which should form the record of the agreement, and from which the terms of the agreement could be collected. Where, however, the terms of an agreement have to be collected from a correspondence it is obvious that it would often be difficult if not impossible to select any one letter in the correspondence which could be regarded as containing a memorandum of the entire agreement.

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It is clear that this difficulty has not escaped the notice of the legislature. Referring back to Act X of 1862, which was enacted for the purpose of consolidating and amending the law relating to stamp duties, we find a note to schedule A in which it is enacted that if two or more letters are offered in evidence to prove an agreement between the parties who shall have written such letters, it will be sufficient if any one of such letters be stamped as an agreement. The duty chargeable on an agreement under the Act of 1862 was one rupee.

The General Stamp Act XVIII of 1869 which repealed the Act of 1862, repealed this provision in the form of a proviso to article 11, schedule II, at the same time reducing the duty upon a memorandum of an agreement to eight annas. The proviso is, however, entirely omitted in the corresponding article 5(a), schedule I of the present Stamp Law, which still further reduces the charge upon an agreement to one anna, and we cannot doubt that the omission of the legislature to re-enact the clause must have been intentional. The point for determination is whether the intention was to exclude such letters from the category of agreements liable to stamp duty or to omit what was regarded as a superfluous provision.

It appears to us that there are several reasons in support of the first-mentioned intention. Not only has the tendency of legislation been to lighten the burden of taxation with reference to agreements, but the Stamp Act being a fiscal enactment, the intention to tax a particular instrument must appear in terms clear and positive, and in case of doubt, the construction must be in favor of the subject.

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As the Act stands at present, all the letters would require to be stamped unless the terms of the agreement can be collected from any one of them, which is frequently impossible. It appears to us most improbable that the legislature could have intended to hamper commercial transactions in such a manner and the fact that the terms of an agreement if embodied in a single document was in future intended to be only liable to the reduced duty of one anna certainly favors this view.

When we consider, therefore, the omission of the proviso from the present Stamp Act, together with the recognized principles of construing fiscal enactments, we are led to the conclusion that the legislature intended to make a distinction between a document which is intended by the parties concerned to be a formal expression of the terms of an agreement, and letters offered in evidence from which an agreement and its tenor have to be inferred by a process of construction; and that to provide for the difficulty which might be felt by the parties writing the letters as to which of them should be stamped, the legislature deliberately omitted to render any of such letters merely evidencing an agreement liable to future duty while at the same time imposing a reduced duty upon a formal instrument.

Our answer to the first question is that none of the letters A to E is liable to stamp duty. The contingency on which the second question was referred to us does not, therefore, arise, and it is not necessary for us to answer it. The costs of the reference must follow the event.

Attorneys for plaintiff *Wilson & King*.

Attorney for defendant *Grant*.
