

REFERENCE  
UNDER STAMP  
ACT, s. 46.

The agreement in question, to which the Secretary of State for India in Council and Rozario Fernando therein called the contractor were parties, related to the carriage of salt. It was, *inter alia*, recited that "the contractor has lodged in the treasury of Salt Circle office Government promissory notes . . . as security for the due and faithful performance by the contractor of this, his contract;" and it was, *inter alia*, witnessed that "upon the completion of this contract to the satisfaction of the Deputy Commissioner, the Deputy Commissioner will cause to be returned and delivered up to the contractor the said promissory notes to the value of Rs. 2,000, so deposited by the contractor as security for the due and faithful performance of this, his contract."

The *Acting Government Pleader* (Mr. Powell) for the Board of Revenue.

The Full Bench (Collins, C.J., Kernan, Muttusámi Ayyar, Brandt, and Parker, JJ.) delivered the following

JUDGMENT :—The judgment of the High Court is in accordance with the opinion of the Board of Revenue.

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## APPELLATE CIVIL—FULL BENCH.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt, and Mr. Justice Parker.*

1887.  
July 29.

REFERENCE BY THE BOARD OF REVENUE UNDER S. 46 OF THE  
INDIAN STAMP ACT, 1879.\*

*Stamp Act—Act I of 1879, ss. 5, 14, 35, 37, 39.*

A deed of release was endorsed on a deed of conveyance for Rs. 100. The conveyance bore an impressed stamp for one rupee, but the endorsement was unstamped :

*Held*, that the conveyance was valid and that the release could be validated on payment of the deficient stamp duty and the penalty under s. 39 of the Stamp Act.

CASE referred to the High Court under s. 46 of the Stamp Act.

The reference was made as follows :—

"The Sub-Registrar, Ootacamund, impounded, under s. 35, o. 2 of the Indian Stamp Act, and forwarded to the Collector,

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\*[Referred Case No. 5 of 1887.]

a document purporting to contain two instruments, one a conveyance written on the face of the paper and one a release written on the back of the paper. The document bore a stamp of one rupee.

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“The Collector considered that the conveyance required a stamp of one rupee, and that therefore the release is not entitled to the benefit of the proviso to s. 37, being written not only in contravention of s. 13; but also in contravention of s. 5 of the Act. The Collector doubted whether he could validate the release by a certificate under s. 39 on payment of deficient stamp duty and penalty, or whether he should order the release to be executed over again on a stamped paper.

“The Board feel doubt on the following points:—

(a) Whether the first instrument should be considered to have been written, executed, and stamped according to law. The Board think that it should, and would regard s. 14 of the Act as only invalidating the second instrument. The first instrument was duly stamped and written in accordance with the terms of s. 12; and the existence of the second instrument on the back does not appear to invalidate the first.

(b) Whether the second instrument can be validated on payment of the deficient stamp duty and the penalty under s. 39.

“The Board think it can, though obviously it might be very inconvenient that it should be possible that two valid instruments should be written, the one on the face and the other on the back of a stamped paper.

“The Board, feeling some doubts on the case, have resolved to refer it to the High Court.”

•The *Acting Government Pleader* (Mr. *Powell*) for the Board of Revenue.

The Full Bench (Collins, C.J., Kernan, Muttusami Ayyar, Brandt, and Parker, JJ.) delivered the following

JUDGMENT:—As to both questions, the High Court agrees in the view expressed by the Board.

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