

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.

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

1887.
July 29.

Stamp Act—Act I of 1879, s. 3, ol. 13—Mortgage—Indemnity bond.

An agreement entered into by the Secretary of State and a salt contractor recited that the contractor has deposited certain promissory notes to secure the due fulfilment of the contract and provided that the promissory notes should be returned on the due fulfilment of the contract :

Held, that the agreement was a mortgage as defined by the Stamp Act.

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

The reference was made as follows :—

“The Assistant Commissioner of Salt and Abkári Revenue, Tinnevelly division, impounded under s. 33 of Act I of 1879, and forwarded to the Collector, a document, purporting to be a mortgage with possession of property valued at Rs. 2,000. The agreement was drawn on a stamp of the value of Rs. 10.

“The Collector considering the document to be a mortgage and also an indemnity bond for a further (indefinite) amount, ruled that it should be stamped with aggregate duty, viz., Rs. 20 + Rs. 5, or Rs. 25 in all.

“The Board are of opinion that the document is a mortgage-deed and should have a stamp of Rs. 20, but that the indemnity clause being incidental to all mortgage-deeds is not liable to a separate duty—*vide Reference by the Board of Revenue*(1).

“The Board have refunded the proportionate penalty levied on the indemnity clause of the document under s. 42, but have no power under the Act to revise the adjudication as to the stamp duty and to order a refund of the duty improperly levied. They have, therefore, resolved to refer the case to the High Court under s. 46, and will, in case of the judgment of the High Court being in accordance with their opinion, order a refund of the excess duty levied.”

* Referred Case No. 4 of 1887.

(1) I.L.R., 1 Mad., 133.

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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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,

*[Referred Case No. 5 of 1887.]