

## 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, ss. 3, 31, 51.*

Allowance for spoiled stamps may be made under s. 51 of the Stamp Act when a stamped instrument has been endorsed by the Collector under s. 31.

CASE referred to the High Court by the Board of Revenue under s. 46 of the Stamp Act—Act I of 1879.

The reference was made as follows:—

“On the 15th April last Mr. Straith, on behalf of the North Travancore Land Planting Society, forwarded two deeds of transfer to the Collector of Madras, and applied, under s. 30 of the Stamp Act, for adjudication of the stamp-duty leviable upon them. The Collector adjudicated; the amount, Rs. 40, was levied from Mr. Straith, and payment of the full duty was certified to under s. 31.

“A clerical error was subsequently discovered in the deeds, and the instruments having thereby become useless, Mr. Straith now asks for a refund of the Rs. 40, so levied from him and certified to under s. 51.

“The Board therefore beg to submit the following question for the orders of the High Court:—

“Can a refund of stamp-duty levied and certified to under s. 31 of the Stamp Act, be claimed under the provisions of s. 51?”

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:—Section 31 of the Stamp Act provides that any instrument upon which an endorsement has been made under that section shall be deemed to be “duly stamped,” and may be acted upon as if it had been originally duly stamped. Under s. 3,

\* Referred Case No. 1 of 1887.

REFERENCE UNDER STAMP ACT, s. 46. clause 10, "duly stamped" as applied to an instrument means stamped or written upon an impressed stamp in accordance with the law in force in British India when such instrument was executed or first executed.

Our answer, therefore, is that allowance may be made under s. 51 of the Stamp Act for instruments endorsed under s. 31 of that Act.

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1887.  
July 29.

REFERENCE UNDER S. 49 OF THE INDIAN STAMP ACT, 1879.\*

*Stamp Act—Act I of 1879, s. 49.*

A bail-bond was executed to a District Múnsif, who expressed no doubt as to the amount of duty to be paid and made no application to have the case referred. The District Judge referred the case to the High Court:

*Held*, that the District Judge was not authorised to make the reference.

CASE stated to be referred for the decision of the High Court by J. D. Goldingham, District Judge of Bellary, under s. 49 of the Stamp Act, in the matter of a bail-bond executed to the District Múnsif of Naraindeverkerry. The District Múnsif expressed no doubt as to the amount of duty to be paid, and made no application to have the case referred to the High Court.

Counsel were not instructed.

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

JUDGMENT:—It is not explained how this reference comes to be made by the District Judge: it should have been made, if at all, by the District Múnsif through the District Judge; but it does not clearly appear that there are grounds for such a reference under s. 49. The District Múnsif had apparently no doubt as to the amount of stamp duty payable on the instrument; and it is in such case only that a Court is authorized to make a reference under s. 49 of the Stamp Act.

The reference is therefore returned to the District Judge.

\* Referred Case No. 3 of 1887.