

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice,
and Mr. Justice Wilkinson.

QUEEN-EMPRESS

v.

VENKATRAYADU.*

1888.
Jan. 18.

Stamp Act—Act 1 of 1879—s. 37 (b), ss. 40, 61, 63—Prosecution for attempt to defraud Government by understating the value of property in a partition deed.

A District Judge impounded a partition deed produced before him and forwarded it to the Collector under s. 35 of the Stamp Act, 1879, being of opinion that the executant of the deed had committed an offence under s. 63. The Collector under s. 69 sanctioned the prosecution of the executant, who was convicted by the Magistrate of an offence under s. 63 of the Act. On appeal the Sessions Court acquitted him on the ground that the Collector had not complied with s. 37 (b) or s. 40 of the Act :

Held, that the acquittal was wrong. *Empress v. Dwarkanath Chowdhry* (I.L.R., 2 Cal., 399), *Empress v. Soddanund Mahanty* (I.L.R., 8 Cal., 259), *Empress v. Janki* (I.L.R., 7 Bom., 82), considered.

APPEAL under s. 417 of the Criminal Procedure Code from an acquittal by W. G. Underwood, Acting Sessions Judge of Kistna, reversing the sentence of C. M. Mullaly, Joint Magistrate of Kistna, in calendar case No. 22 of 1886.

The material portion of the Sessions Court judgment was as follows :—

“The District Court in its proceedings did not allege fraud ; but as it mentioned s. 63 of the Act, it must have considered that there was an intent to defraud Government. The Collector passed proceedings :— ‘The parties will be prosecuted. Mr. Robinson will try the case.’

“The appellant relies on *Empress v. Dwarkanath Chowdhry*(1), *Empress v. Soddanund Mahanty*(2), *Empress v. Janki*(3). He also relies on the proviso of s. 61 of the Act. Subsequent to the date of the judgment, the Sub-Collector levied the deficient duty

* Criminal Appeal No. 257 of 1887.

(1) I.L.R., 2 Cal., 399.

(2) I.L.R., 8 Cal., 259.

(3) I.L.R., 7 Bom., 82.

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Rs. 50 and a fine of Rs. 500. This was also the penalty he inflicted as Joint Magistrate. It is not disputed but that Rs. 50 is the deficient stamp duty.

“The document was impounded under s. 35. The Collector did not comply with s. 37 (b), and according to the cases quoted the conviction is illegal. There is nothing on record to show that the Collector satisfied himself under s. 40 that there was any intention to evade payment of the proper duty. It is urged that the Joint Magistrate by taking criminal measures before demanding the deficient duty has deprived the appellant of the benefit of the proviso of s. 61. Section 63, however, allows of a penalty of Rs. 5,000. It is clear that the two sections are not intended to be read together. But it does not follow that s. 27 is not governed by ss. 35 and 37. Taking the rulings quoted, the finding and sentence of the Joint Magistrate are illegal, and the fine of Rs. 500 is ordered to be returned if levied.”

The further facts of the case and the arguments adduced on the appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Wilkinson, J.).

The Public Prosecutor (Mr. Powell) for the Crown.

Mahadeva Ayyar for the defendant.

JUDGMENT.—This is an appeal by Government against the decision of the Sessions Judge of Kistna reversing the finding and sentence of the Joint Magistrate in a prosecution under the Stamp Act—Act I of 1879.

In December 1884 the District Court having under s. 33 of the Stamp Act impounded a partition deed produced before it, forwarded it under s. 35 to the Collector, being of opinion that the executant of the deed had committed an offence under s. 63 of the Act. The Collector under the provisions of s. 69 sanctioned the prosecution of the offender before the Head Assistant Magistrate, from whose Court the case was transferred to the Joint Magistrate. The Joint Magistrate found that there had been “a glaring attempt to defraud Government,” property worth about Rs. 30,000 having been set forth in the partition deed as worth only Rs. 7,975. The deficient stamp-duty leviable amounted to Rs. 50. He inflicted a fine of Rs. 500.

The accused appealed to the Court of Sessions, and the Judge reversed the finding and sentence of the Joint Magistrate. He was of opinion that the conviction was illegal, because the Collector

had omitted to collect the deficient stamp-duty before sanctioning the prosecution. He relied on certain decisions of the Calcutta and Bombay High Courts.

We are of opinion that the decision of the Sessions Judge is not maintainable and that the finding and sentence of the Joint Magistrate were right and must be restored.

Section 37 (b) of the Stamp Act applies to the case of a document not duly stamped. In cases in which the omission to stamp at all or to stamp duly arises from negligence, inadvertence or ignorance of the provisions of the stamp law, it is the duty of the Collector to compel the payment of the duty. But in the present case the stamp affixed to the document was, according to the valuation of the property set forth therein, correct, and the Collector therefore had no duty to perform under s. 37. The facts affecting the amount of the duty with which the instrument was chargeable had, in the opinion of the Judge who impounded the document, not been fully and truly set forth, and the questions for determination therefore were—1st, whether the property had been properly valued, and, 2nd, if not, whether it had been undervalued with intent to defraud Government. It was not necessary, nor was it possible for the Collector, to collect any duty until it had been decided in a proper inquiry what was the real value of the property. Nor do we think that the conviction was bad, because the Collector failed to record proceedings under s. 40 to the effect that he had satisfied himself that there was an intention to evade payment of the proper duty. That section only refers to cases in which a prosecution is instituted after a penalty has been paid. It confines the power of instituting prosecutions to the Collector, and instructs him to exercise it only when it appears to him that the offence was committed with intention to evade payment of the proper duty. In the present case the Collector sanctioned the prosecution of the offender in 1884, and no penalty was levied in respect of the instrument until after the decision and sentence of the Joint Magistrate.

The cases relied on by the Sessions Judge have no application to the present case, as they were decided with reference to the offence made punishable by s. 61 of the Act, and intention to evade payment is not an essential ingredient of the offence described in s. 29, Act XVIII of 1869, see *Empress v. Dwarkanath*

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Chowdhry(1), or in s. 60, Act I of 1879. But the intent to defraud is the essential ingredient of the offence made punishable by s. 63.

For these reasons we set aside the finding of the Sessions Judge and restore that of the Joint Magistrate.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

ABDUL AND OTHERS (DEFENDANTS), APPELLANTS,

v.

AYAGA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

*Civil Procedure Code, s. 45—Suit for declaration—Multifariousness—Malabar Law—
Suit by junior members of tarwad.*

Suit by some of the junior members of a Malabar tarwad against the karnavan and the other members of the tarwad, and certain persons to whom some of the tarwad property had been alienated by the karnavan, for a declaration that the alienations were not binding on the tarwad :

Held, that the suit was not bad for multifariousness. *Vasudeva Shanbhaga v. Kuleadi Narnapai*(2) followed.

APPEAL against the decree of C. Gopalan Nayar, Subordinate Judge of South Canara, in original suit No. 22 of 1886.

The plaintiffs, who were some of the junior members of a Malabar tarwad, sued the karnavan, the remaining members of the tarwad, and certain persons to whom some of the tarwad property had been alienated by the karnavan for a declaration that these alienations were not binding on the tarwad.

The Subordinate Judge decreed as prayed in the plaint. The alienees preferred this appeal on the grounds (among others) that the suit was bad for multifariousness, and misjoinder of causes of action, and that the decision of the Subordinate Judge was against the weight of evidence.

Ramachandra Rau Sahib, Sankaran Nayar and Subba Rau for appellants.

Mr. Subramanyam and Sundara Ayyar for respondents.

(1) I.L.R., 2 Cal., 309.

* Appeal No. 98 of 1887.

(2) 7 M.H.C.R., 290.