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other respects, the Registrar is in all essentials, a Court, I am not disposed to give weight to the circumstance that the Legislature doubted whether the Registrar was a Court, or thought it expedient to leave it to the Government to say whether he should be ranked as a Court, with reference to a particular purpose. I do not think that circumstance can be considered conclusive to show that the Legislature in passing the Registration Act did not intend the Registrar to be a Court for other purposes than those referred to in section 84.

For this reason, I think, that the decision of this Court mentioned in the order of reference ought to be followed, and that the question referred to us should be answered in the affirmative.

This petition having come on for final disposal, the Court delivered the following judgment.

JUDGMENT.—The only parties to these proceedings are the first and second defendants. So far as they are concerned the order of the Sessions Judge must be set aside inasmuch as the sanction of the Registrar is required by section 195, Criminal Procedure Code, for their prosecution. The order of December 3rd, 1890, staying proceedings is discharged.

APPELLATE CIVIL.

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

KYD AND ANOTHER (PLAINTIFFS),

v.

MAHOMED (DEFENDANT).*

Stamp Act—Act I of 1879, sched. II, art. 2—Exemption—Agreement for the sale of goods.

An agreement for the sale of goods does not require a stamp under the Indian Stamp Act, although it contains provisions as to the warehousing and insurance of the goods previous to delivery.

CASE stated under section 69 of the Presidency Small Cause Court Act, 1882, and section 617 of the Code of Civil Procedure by P. Srinivasa Rau, Second Judge of the Small Cause Court, Madras, in his letter, dated 13th February 1891, No. 129, in the matter of Small Cause suit No. 20431 of 1890 on his file.

* Referred Case No. 5 of 1891.

The question referred was the following:—

“Are the agreements A and B filed by the plaintiffs in this suit such as are exempted from stamp duty under article 2, schedule II of the General Stamp Act I of 1879?”

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The agreements A and B were as follows:—

A.

Madras, 7th February 1889.

“I have this day purchased from Mr. F. M. Bowden the following article at the prices as specified below payable in cash within thirty days from the date of the steamer arrival less one and three-quarter per cent. discount, 5 cases of 100 pieces each John Orr Ewings assorted jaconets, quality and patterns as per indent No. 403 at Rs. 3-11-0 per piece, 38/39; 20 yards Turkey red and yellow jaconets.

“In default of payment within the time above specified I do hereby authorize Mr. F. M. Bowden, to sell at public auction or by private bargain to the best advantage the goods above referred to or such portion of them as may be left with them unpaid for and uncleared at the time on my account and credit the proceeds thereof less 3½ per cent. (being commission on resale) to my account, and I do hereby further engage and promise to pay to Mr. F. M. Bowden, on demand, any loss that may be incurred by such resale or balance that may still remain due by me on account of the purchase forfeiting all advantages and the amount of the deposit, if any. It shall, however, be in the option of Mr. F. M. Bowden, in the event of the goods not being cleared on or before the prompt of thirty days above referred to, to allow the goods or any portion of them to remain uncleared for such further period as he may think fit and for this accommodation I undertake to pay to Mr. F. M. Bowden, a consolidated charge of 12 per cent. per annum to cover godown rent, fire insurance, and interest. It is further provided that all claims on account of late delivery, inferiority of goods, or otherwise are to be preferred within the prompt of thirty days above referred to, failing which it shall be competent to Mr. F. M. Bowden to decline to entertain them. Service of notices to be considered complete if it can be shown that same have been duly despatched. In the event of the goods above referred to not being forthcoming owing to frost, strikes at manufacturer's works, destruction by fire, loss at sea, &c., this agreement is to be considered null and void, but on the other hand should only a portion be so lost or destroyed this agreement will become null and void only as regards the portion lost or destroyed, but remain in force as regards the portion available. Should any dispute arise in regard to the time of delivery, alleged inferiority of the goods or otherwise I hereby agree to refer the matter to and abide by the decision of two European arbitrators skilled in Import business, one of whom shall be appointed by me and one by Mr. F. M. Bowden, and should the said arbitrators differ in opinion it shall be competent to them to refer the question to an aversman, whose decision shall be final.

“In the event of any import or other duties being imposed I agree to pay the same in addition to the sale price.

“The above has been explained to me, and I understand it.

“(Signed) EBBAHAM SALAY MAHOMED.”

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B.

Madras, 16th May 1889.

"I have this day purchased from Mr. F. M. Bowden the following articles at the price as specified below payable in cash within thirty days from less one and three-quarter per cent. discount, 6 (six) bales each 300 pieces 29/30 inches 4/5½ yards filled dhooties at Rs. 0-11-10½ pies, per piece."

"(Signed) EBRAHAM SALAY MAHOMED."

Mr. W. Grant for plaintiffs.

Mr. K. Brown for defendant.

JUDGMENT.—We are of opinion that the agreements A and B fall within the exemption. It is urged that the stipulations relating to the payment of godown rent and fire insurance as also those relating to reference to arbitration are extraneous to the contract of sale, but we are of opinion that they are only collateral and subsidiary incidents relating to the sale of the goods, which is the transaction evidenced by the documents.

The test which should be applied is to see whether the document evidences only a transaction of sale or a sale and some other independent transaction, and if the former the number of subsidiary stipulations it may contain cannot alter the nature of the transaction. The material words of the exemption are "an agreement for or relating to the sale of goods or merchandize exclusively," and the intention was to exempt *bonâ fide* sales and purchases of merchandize from stamp duty. If the contention were to prevail fair effect could not be given to that intention.

We answer the question referred to us in the affirmative. The plaintiffs are entitled to the costs of this reference.

D. Grant, Attorney for plaintiffs.

Branson & Branson, Attorneys for defendants.