

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice
Muttusami Ayyar and Mr. Justice Shephard.

REFERENCE UNDER STAMP ACT, s. 46.*

1891.
October 13.

Stamp Act—Act I of 1879, s. 46, Sched. I, arts. 5 (c), 44—Mortgage—“ Agreement not otherwise provided for.”

A license issued to an arrack renter expressly required as one of its conditions that the licensee should deposit a sum equal to three months' rental as a security for the due performance of the contract. The licensee executed a muchalka stating that he agreed to all the terms and conditions mentioned in the license :

Held, that the muchalka ought to be stamped with an eight-anna stamp.

CASE referred for the opinion of the High Court by the Board of Revenue under section 46 of the Indian Stamp Act, 1879.

The case was referred as follows :—

“ The question is, what is the stamp duty on a muchalka executed by an abkari licensee ? The muchalka simply states that the executant agrees to all the terms and conditions mentioned in the license. One of the conditions of the license is that, as a security for the due performance of the conditions of the contract, the licensee shall deposit with the Collector in cash, Government notes or stock notes, a sum equal to three months' rental. Should the document be stamped as a mortgage under article 44, schedule I, or as an agreement under article 5 (c), or, if not under either of these, under what other article of schedule I ?

“ According to the Indian Stamp Act, a mortgage deed includes every instrument, whereby one person transfers in favour of another a right over specified property for the performance of an engagement. Thus neither the license nor the muchalka taken separately or together fulfils the conditions of a mortgage as defined in the Stamp Act, *i.e.*, neither thereby actually creates an interest in the deposit in favour of Government.

“ The Board is, therefore, of opinion that an abkari muchalka of the kind under reference comes under article 5 (c), schedule I, and that the proper stamp duty is eight annas. But as the

* Referred Case No. 23 of 1891.

“matter is not free from doubt, it is referred to the Honorable the Judges of the High Court for the favour of an authoritative ruling.”

REFERENCE
UNDER STAMP
ACT, s. 46.

The Government Pleader (Mr. Powell) for the Crown.

JUDGMENT :—We think, the Board are right and that the document ought to be stamped with an eight-anna stamp.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Shephard.

KRISHNA VIJAYA PUCHAYA NAICKER, PLAINTIFF,

v.

MARUDANAYAGAM PILLAI, DEFENDANTS.*

1891.
December 1.

Civil Procedure Code, s. 39—Pleader retained by a Collector as Agent of Court of Wards—Validity of vakalat after the Collector's death.

The Collector of a district, who was Agent for the Court of Wards, filed a suit on behalf of a ward of the Court of Wards and executed a vakalatnama to a Pleader whom he retained to conduct it. The Collector died before the suit was determined:

Held, that it was not necessary for a new vakalatnama to be executed to enable the pleader to proceed with the conduct of the suit.

CASE referred for the decision of the High Court under Civil Procedure Code, s. 617, by M. A. Tirumalachariar, Acting District Munsif of Kulitalai.

The case was stated as follows :—

“In small cause No. 224 of 1891 on the file of this Court, the plaintiff is the minor Zamindar of Marungapuri, represented by the Court of Wards.

“Before the suit could be disposed of Mr. G. W. Fawcett, the late Collector of the district of Trichinopoly and Agent to the Court of Wards, who gave the vakalatnama to a Vakil of this Court, died.

“As the suit came on for hearing and disposal after his demise, it was objected on the defendant's side that a fresh vakalat should be produced from the present Collector since the

* Referred Case No. 29 of 1891.