

## FULL BENCH—APPELLATE CIVIL.

*Before Sir. Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar, Mr. Justice Parker and Mr. Justice Wilkinson.*

## REFERENCE UNDER STAMP ACT, s. 49.\*

1892.  
August 9.

*Madras Regulation II of 1825, s. 4—Ad valorem stamp duty.*

An instrument, dated 1853 which purported to be a transfer by the executant of the property inherited by her from her husband subject to the payment of his debts, and in which a provision was made for the maintenance of the executant and for the retransfer of the property in case she gave birth to a son :

*Held not* to be liable to stamp duty.

CASE referred under Stamp Act, s. 49, by T. Sami Ayyar, Acting District Munsif of Ariyalur.

The case was referred as follows :—

“ In original suit No. 30 of 1892, on this Court's file, a certain document drawn up in Tamil has been filed for the defendant, which, together with a copy thereof, is enclosed and a translation subjoined. The document purports to be a gift or devise relating to certain immovable properties of which, however, the value is not specified. It bears date the 23rd September 1853, and the stamp law then in force was Madras Regulation II of 1825. In that enactment, as well as in those preceding it, provision is made for the levy of prescribed stamp duties on instruments of the description under reference according to the value borne by them.

“ The table annexed to section 11 of Regulation XIII of 1816 prescribes various scales of duty ranging from 2 annas to 150 rupees, and it is enacted by section 4 of Regulation II of 1825 that instruments not exceeding 64 rupees in value shall not require a stamp, thereby fixing the minimum limit of taxation at 4 annas. But it is nowhere to be found in the enactments relating to the stamp law including the one now in force, what the procedure is in the case of instruments in which the value of the subject-matter is not specified, though it may be presumed that it would come within the taxable limit. In this case

\* Referred Case No. 28. of 1892.

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ACT, s. 49.

“there is no doubt that the value of the properties comprised in the deed is much more than 64 rupees which is the minimum limit for taxation as above pointed out, because one of the numerous items of immovable properties thereby alleged to be conveyed is, according to the evidence in this case, worth Rs. 50. I am, however, aware of no provision of law or any ruling which defines the process by which the actual value in such matters is to be ascertained.

“The consideration, for the transfer of which the present document would be evidence, is the payment of certain debts by the claimant on account of the executant. If the amount of such debts at least had been specified that would, under the provision contained in section 24 of the present Act, afford a standard for the determination of the stamp duty. In the absence of any tangible means prescribed for determining the question, I respectfully beg to refer the same for orders. In my opinion it would be equitable to levy the minimum rate, if not to ascertain the actual value of the properties at the date of the instrument by judicial investigation and thereupon to fix the duty payable on the instrument. As I am able to find no authoritative ruling on the question, I have been under the necessity of making this reference.”

The document to which it relates was as follows:—

“Deed of settlement, dated 9 Parattasi Piramathicha, corresponding to 23rd September 1853, executed to Chidambaram Pillai, son of Ambia Pillai, residing at Mailarasur, by his elder brother's daughter-in-law, Valiammi, wife of Arunachalam Pillai, residing at the said place. The terms being: After the division and enjoyment of the property, land, house, &c., among the three persons, viz., my husband, Arunachalam Pillai and Muthusami Pillai, as my husband died this year and as I have no other person to look after my estate, you are at liberty to enjoy the immovable properties that fell to the share of my husband, viz., house, house-site, lands, well, garden, cattle-shed, there being no other property to me besides for my maintenance, you should plough and sow for me  $\frac{1}{4}$  cawni of Karambai Kollai land; I shall manure the field myself. You should pay off the Government kist with the exception of this; you may enjoy all the other properties and clear all the debts of my husband. As I am now carrying, if I am blessed with a son and if he is spared and he

“attains his majority, you should give back to me the properties that have fallen to my share, and I and my son will pay you back, without interest, the debts discharged by you. In the event of my not being delivered of a male issue, you are at liberty to enjoy the whole of the properties and cultivate for me the aforesaid  $\frac{1}{4}$  cawni of land during the rest of my lifetime. This deed of settlement I execute with my free will and consent. In case I act contrary to the provisions stipulated herein, I am entitled only to the  $\frac{1}{4}$  cawni set apart to me.”

REFERENCE  
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ACT, s. 49.

Counsel were not instructed.

JUDGMENT.—The deed is not an instrument of gift but purports to transfer to Chidambaram Pillai the property of the executant's husband, subject to the payment of his debts. It also purports to reserve  $\frac{1}{4}$  cawni for the maintenance of the executant and provides for the retransfer of the property in case she should give birth to a son. There is nothing to show that the value of the interest transferred exceeded Rs. 64. The value of the property cannot be taken as the value of the interest actually transferred. We are unable to hold that the document is liable to stamp duty.

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## APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

vs.

ALAGU KONE.\*

1892.  
September 21.  
October 5.

*Criminal Procedure Code—Act X of 1882, s. 164—Oaths Act—*

*Act X of 1873, ss. 4, 14.*

A Magistrate, acting under Criminal Procedure Code, s. 164, has power to administer an oath, and a charge of perjury can be framed with regard to statements made before him on oath when he is so acting.

APPEAL by Government against a judgment of acquittal by H. S. Wynne, Additional Sessions Judge of Madura.

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\* Criminal Appeal No. 295 of 1892.