

QUEEN-  
EMRESS  
v.  
FAKRUDEEN.

MUTTUSAMI AYYAR, J.—I am also of the same opinion. In the absence of any rules framed by Government, the departmental punishment inflicted on the accused under section 10 of Act XXIV of 1859 does not bar his prosecution under section 44 of the same Act, unless the Magistrate thinks that the breach of duty is not grave but trivial. It is a grave violation of duty on the part of a police officer to go to sleep whilst on guard, and I would follow the principle laid down by this Court in its proceedings, dated the 3rd October 1878, No. 1601. Weir, p. 569. I would *also* set aside the order of acquittal and order a re-trial with reference to the foregoing observations.

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### APPELLATE CIVIL—FULL BENCH.

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

1894.  
March 1.

### REFERENCE UNDER STAMP ACT, s. 46. \*

*Stamp Act—Act I of 1879, sched. I, art. 4—'Agreement to lease.'*

An agreement by a zamindar to execute a formal deed of lease of his zamindari which is under attachment, after obtaining a certificate from the Court under s. 305 of the Civil Procedure Code, is an 'agreement to lease' under art. 4, sched. I of the Stamp Act.

CASE referred for the decision of the High Court under section 46 of Act I of 1879 by the Board of Revenue, Madras. The case stated was as follows:—

“On the 11th January 1886, the Zamindar of Sivaganga entered into an agreement (marked A) with the Rajah of Nilambur and another to lease the zamindari to the latter in consideration of his debts, to the extent of 16 lakhs of rupees, being discharged by them. At the time of the agreement the zamindari was under attachment and the zamindar undertook to execute a formal deed of lease after obtaining a certificate from the Court under section 305 of the Civil Procedure Code. The agreement in question was engrossed on an eight-anna stamp paper,

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\* Referred Case No. 4 of 1894.

“apparently under article 5 (c) of schedule I. The question at issue is whether the stamp was sufficient, and if not, under what article of schedule I the instrument ought to have been stamped?”

REFERENCE  
UNDER STAMP  
ACT, s. 43.

“The main grounds on which it is contended that the agreement was properly stamped are that as the zamindari was under attachment, the document was not and could never have been intended to operate as a lease, and that the subsequent conduct of the parties resulting eventually in the execution of a formal and duly stamped deed of lease makes it clear that the agreement of the 11th January 1886 was intended as a mere agreement and nothing else.

“The Board, while conceding that the agreement was not intended to operate as a lease, is unable to accept the conclusion that it is, therefore, not liable to duty under article 4, schedule I of the Stamp Act. In that article it is clearly stated that an agreement to lease is chargeable with the same duty as a lease, and there is no saving clause to indicate that the intention (which in the present case may be admitted) subsequently to execute a regular lease makes any difference. The charge of the full duty both on an agreement to lease and on a lease executed in pursuance thereof is guarded against by the proviso to article 39. The Board considers that the law may be read as meaning that an agreement to lease is chargeable as a lease, whether an actual lease is subsequently executed or not and notwithstanding any *bonâ fide* intention on the part of the executants of the former subsequently to execute the latter; otherwise the proviso to article 39 would be superfluous.”

The *Government Pleader* (Mr. E. B. Powell) for the Crown.

Mr. W. Grant for plaintiff.

JUDGMENT.—We are of opinion that the document is an agreement for a lease, and that it must be stamped as such under article 4 notwithstanding that another instrument was intended to be executed.