

APPELLATE CIVIL—FULL BENCH.

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

REFERENCE UNDER STAMP ACT, s. 46.*

1894.
December 17.

Stamp Act—Act I of 1879, s. 51—Spoiled stamp—Accidental injury to stamp.

The purchaser at a Court sale presented a stamped paper for the engrossment of the sale certificate. The stamp was inadvertently punched by some officer of the Court, but the paper was used as intended, and delivered to the purchaser. Subsequently a Deputy Collector, treating the certificate as unstamped, levied the stamp duty together with a penalty :

Held, that the document was duly stamped, and that the amount levied should be refunded.

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

The case was stated as follows :—

On the 24th July 1893, Mr. R. Fischer of Madura purchased certain immovable property sold in execution of the decree in original suit No. 67 of 1892 of the Subordinate Court, Madura (East), and on 30th October 1893 he presented (through his pleader) a stamp paper of the value of Rs. 45 to that Court for engrossing the sale certificate thereon. The stamp was inadvertently punched by some officer of the Court; the instrument was afterwards drawn up on it and delivered to Mr. Fischer. The Deputy Collector of Madura, under the orders of the then Collector, treating the stamp as a spoiled one, ruled that the certificate of sale was not duly stamped and levied a stamp duty of Rs. 45 and a penalty of Rs. 5. Against this order Mr. Fischer now appeals to the Board.

The present Collector of Madura contends that there is nothing in the Stamp Act or the rules passed thereunder, which invalidates a stamp paper with a hole in it, and that it is nowhere laid down that cancellation is conclusively proved by punching. He holds that the stamp in the present case was not a cancelled one, as it was punched by mistake, and that the document was duly stamped, and he considers that the penalty and the duty levied from Mr. Fischer should be refunded to him.

* Referred Case No. 11 of 1894.

REFERENCE
UNDER STAMP
ACT, s. 46.

The Board agrees with the Collector and is prepared to remit the penalty of Rs. 5, but has no power to revise the Deputy Collector's decision so far as the stamp duty is concerned. The case is therefore referred for the orders of the High Court. After the decision of the High Court is received, the Board will proceed to dispose of the case conformably with that decision.

Counsel were not instructed.

JUDGMENT.—The reason for making an allowance for a spoiled stamp under section 51 is that the stamp has become unfit for use, but in this case the stamp was not rendered unfit for use by punching, for the Court itself engrossed upon the paper the deed for which the stamped paper was presented. We are of opinion that the Deputy Collector was in error in treating the document as unstamped.

APPELLATE CIVIL—FULL BENCH.

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

RAJAM CHETTI (PLAINTIFF), APPELLANT,

v.

SESHAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

High Court powers of, to make rules as to Small Cause Court—24 and 25 Vict., cap. 104, s. 15—Civil Procedure Code—Act XIV of 1882, s. 652—Presidency Small Cause Courts Act—Act XV of 1882, ss. 6, 18, cls. (a) and (c), 33.

In 1885 the High Court made a rule under Presidency Small Cause Courts Act, section 33, whereby it was declared that the granting leave to sue a defendant out of the jurisdiction under section 18, clauses (a) and (c) of that Act, was a non-judicial or quasi-judicial act within the meaning of that section and might be done by the Registrar of the Court of Small Causes, Madras :

Held, that the rule was *ultra vires* and void.

CASE referred for the opinion of the High Court by R. B. Michell, Chief Judge of the Small Cause Court, Madras, under Civil Procedure Code, section 617, and Presidency Small Cause Courts Act, section 69.

Before the hearing of the case out of which this reference arose, the Chief Judge and the other Judges of the Small Cause Court had, in a similar case, delivered judgment as follows :—

* Referred Case No. 32 of 1894.