

CRIMINAL REFERENCE.

Before Mr. Justice Tottenham and Mr. Justice Ghose.

QUEEN EMPRESS *v.* JUGGERNATH (ACCUSED).^{*}

1885
February 24.

Stamp Act (I of 1879), s. 3, cl. 17, and Art. 52, Sch. I—Receipt—Acknowledgment.

An entry made by a creditor in the *khatta*-book of the debtor, and signed by him for the payment of a sum of money in discharge of a debt is a "receipt" within the meaning of s. 3, cl. 17, of the Stamp Act, and as such must be stamped under Art. 52, Sch. I of that Act.

THIS was a reference from the Presidency Magistrate of Calcutta under s. 432 of the Criminal Procedure Code, and the question referred was as to whether an entry in a *khatta*-book proved to have been signed by the accused was a receipt within the meaning of cl. 17, s. 3, of the Stamp Act (Act I of 1879,) and as such required a one-anna stamp under Art. 52, Sch. I of that Act.

The Magistrate in his letter, referring the case, stated as follows:—

"Independent evidence has been given to show that the amount paid was in satisfaction of a debt, and the entry also refers expressly to the transaction out of which the debt arose. The amount in figures and the name of the accused are shown to have been written by the accused at the time he received the payment; and it is admitted that no separate receipt of any sort was taken from the accused or from the firm on whose behalf he received the money.

I have seen the rulings in the cases of *Brojender Coomar v. Bromomoye Chowdhrami* (1), and *Binja Ram v. Rajmohun Roy* (2), but no general principle is deducible therefrom, and the decision in each case must depend on the nature of the particular entry and of the evidence adduced."

The prosecution was one of several of a like nature instituted by the Collector of Calcutta to test the question as to whether such entries did not require to be stamped.

* Criminal Reference No. 1 of 1885, by B. L. Gupta, Esq., Presidency Magistrate, Calcutta, dated the 8th of January 1885.

(1) I. L. R. 4 Calo., 885.

(2) I. L. R. 8 Calo., 282.

1885 The entry was contained in the debtor's books, and was as follows :—

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No. 99.

Year 1291.

Date 7th Assar.

Debit side.

	Rs.	A.	P.
Debited to Sebaram Megraj	405	4	0
Through Juggernath on account of 13th Bysack			
Government note $\frac{p}{45}$ 23466 1 piece .	500	0	0
Deduct returned	94	12	0
	405	4	0
	405	4	0

And it was proved by the evidence that it referred to a previous entry detailing the transaction which was the purchase of a bale of cloth, and that the sum of Rs. 500 was paid to Juggernath, the gomastah of the firm, who retained the sum of Rs. 405-4, the amount due, and returned the balance Rs. 94-12, and that Juggernath made the entry and signed it.

It was also proved by the evidence that it was not the practice to take separate receipts, but that the person who received the money made an entry of the above nature in the books and signed it.

The Advocate-General (Mr. *Phillips*) appeared for the Crown.

Mr. *Sale* and Mr. *Chick* for Juggernath, the accused.

Mr. *Phillips*.—The document amounts to an acknowledgment of the payment of money, and therefore is *prima facie* a receipt, and the only receipts, exempted from duty are those covered by Sch. II, cl. 15. Sub-clause (b) of that clause exempts receipts for any payment of money without consideration, but that is not the case here, for there can be no question that there was consideration for the payment of this sum. The entry is also signed, and such signature shows the actual receipt by the person so signing the amount.

Mr. Sale.—The form and nature of the document sought to be chargeable with stamp duty must be looked at as well as the intention of the parties executing it. For example, entries in an ordinary cash book of receipt of money could surely never be intended to be regarded as receipts. (See *In the matter of Act XVIII of 1869, and the Uncovenanted Service Bank* (1); *Brojender Coomar v. Bromomoye Chowdhurani* (2); *Binja Ram v. Raj Mohun Roy* (3); *Brojo Gobind Shaha v. Goluck Chunder Shaha* (4).

Such entries as this on either side of the account are not intended to operate as acknowledgments of money received or as acknowledgments of debts. They are made solely for the information of the owner of the book in which they appear and for the purposes of his business. The fact that the entry is made by the person receiving the money, and not by the owner of the book is immaterial, because otherwise it might, equally be said, that the entry, if made in the presence of the creditor and acquiesced in by him, would be sufficient to make it chargeable with stamp duty under the section. If the entry in question is liable to be stamped, then the corresponding entry on the other side of the account would also have to be stamped as an acknowledgment of debt. Thus each entry in the book would require to be stamped, as well as the corresponding entries of payment in the creditor's books. If this view of the law be the correct one, it would be impossible to keep *khattas* or native books of account, and the system of account-keeping in the bazar would be completely upset and serious inconvenience would be occasioned.

Mr. Phillips (in reply).—*Mr. Sale's* contention amounts to this, that the question to be considered is not whether the document falls within the section, but whether it was the intention of the parties that it should fall within it. This can scarcely be the correct way of looking at it. * Again, he says, that to be liable to stamp duty the document must have been executed with the same intention as is ordinarily understood by the act of "granting a receipt," and that great inconvenience would be caused by holding that

(1) I. L. R. 4 Calc., 829.
 (2) I. L. R. 4 Calc., 885.

(3) I. L. R. 8 Calc., 282.
 (4) I. L. R. 9 Calc., 127.

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this entry requires to be stamped. But the Legislature have defined the term "receipt" (see s. 3, cl. 17), and the word used is "acknowledged" and not "admitted." An admission may be to any one, and thus an entry by a man in his own book would not come within this section. Giving a receipt is merely giving an acknowledgment of payment made under cl. 1, Sch. I; acknowledgment in books must be stamped. The cases of *In the matter of Act XVIII of 1869* and the *Uncovenanted Service Bank* (1), and *Brojender Coomar v. Bromomoye Chowdhurani* (2), were under the old Stamp Act, and the words in that Act were different.

The opinion of the High Court (TOTTENHAM and GHOSE, JJ.) was as follows:—

TOTTENHAM, J.—It appears to me that Exhibit B, which was submitted to us by the Presidency Magistrate with his letter of the 8th January last, does come within the meaning of cl. 17, s. 3 of the Stamp Act (I of 1879). The signature of Juggernath and the amount, Rs. 405-4 in his handwriting, form, in my opinion, a writing, whereby the debt was acknowledged to have been paid off. I think so because of the place in which this writing appears, namely, against the entry in the debtor's book where the debtor recorded payment of his debt. It is true that we must look to the intention of the parties as to what this writing by Juggernath was intended to import; and upon the evidence I have no doubt that the intention was that what Juggernath wrote should operate as a receipt. I think, therefore, that this writing falls within this definition of a receipt in cl. 17, s. 3 of the Stamp Act.

GHOSE, J.—I am of the same opinion. It seems to me that the entry in Exhibit B, coupled with the writing and signature of Juggernath, the *gomastah* of the firm of Megraj, amounts to a receipt within the meaning of cl. 17, s. 3 of the Stamp Act.

Mr. *Sule* on behalf of Juggernath contended that in this case the question was one of intention, namely, whether the parties intended that the entry and signature in question should operate as a receipt. I accept this contention as perfectly sound, and

(1) P. L. R. 4 Calc., 829.

(2) I. L. R. 4 Calc., 885.

it seems to me that in every case of the kind it should always be a question of intention. On turning to the evidence of Grish Chunder Ghose, the owner of the shop from which the debt in question was due, and reading Exhibit B by the light of that evidence, it appears to me to be clear that the intention of the parties was that the entry and the signature to it of Juggernath should have the same effect as a receipt

Mr. *Sale* also called our attention to several rulings of this Court. Those decisions I observe were passed under the Stamp Act, of 1869. The present Stamp Act of 1879 is more comprehensive, so far as the definition of a receipt is concerned; and it appears that in the cases in which those decisions were passed, the true question was whether the particular document which was tendered in evidence was admissible in law by reason of no stamp having been used. The question here is a different one; and on examining the observations made by the learned Judges in those cases, it would appear that if any principle of law is deducible from them as applicable to this case, it is a principle rather in favor of the view taken by the Crown than opposed to it.

Before Mr. Justice Tottenham and Mr. Justice Ghose.

MAKHAN LAL SAHA (PETITIONER) *v.* MAKHAN CHORA SAHA
(OPPOSITE PARTY.)*

1885
February 19.

Public Nuisance—Obstruction—Enquiry under s. 133, Criminal Procedure Code (Act X of 1882)—Previous orders when no bar to such enquiry—Criminal Procedure Code (Act X of 1882) s. 133.

An application was made under s. 133 of the Criminal Procedure Code (Act X of 1882) for the removal of an obstruction in a public thoroughfare, but after a personal local inspection by the Magistrate, and without any evidence being taken, the parties were referred to a civil suit, and the order was refused, the Magistrate holding that the way was not a public way.

A civil suit was then filed, and during its pendency a second application was made under s. 133 of Act X of 1882, with a like object, which was

Criminal Revision No. 13 of 1885 against the order of Baboo Radha Madhab Bose, Deputy Magistrate of Cutwa, dated the 18th of November 1884.