

REVISIONAL CRIMINAL.

1910
January 6.

Before Mr. Justice Richards.

EMPEROR *v.* BRIJ PAL SARAN AND OTHERS.*

Act No. II of 1899 (Indian Stamp Act), section 62 (1)(b)—Stamp—Award—Unstamped award signed by parties to submission—Party signing "otherwise than as a witness."

Where certain parties to an arbitration, who had signed the submission to arbitration, also signed the award, not as witnesses, but under the heading "signature of the heirs," and the award was not stamped, it was held that such parties did not fall within the purview of section 62, clause (1)(b), of the Indian Stamp Act, 1899, as persons "executing or signing otherwise than as witnesses."

CERTAIN persons, members of the same family, referred to arbitration matters in dispute amongst them by a submission duly signed by the parties concerned. The arbitrator made his award, but did not stamp it in the manner required by law. The award was signed, as well as by the arbitrator, by certain witnesses, and by certain of the parties, who signed under a separate heading "signature of the heirs." The fact that the award was not stamped having subsequently come to the notice of a court, the parties who had so signed were prosecuted under section 62, clause (1)(b), of the Indian Stamp Act and fined. On appeal the convictions were affirmed, but the fines reduced. The parties then applied in revision to the High Court.

Babu *Satya Chandra Mukerji* and Babu *Girdhari Lal Agarwala* for the applicants.

Mr. *R. Malcomson* (Assistant Government Advocate), for the Crown.

The judgment of the Court was delivered by

RICHARDS, J.—This is an application in revision to set aside the order of the Joint Magistrate of Moradabad and the order of the Sessions Judge of Moradabad confirming the conviction, but reducing the fine to a sum of Rs. 150 each. The prosecution was brought under section 62 of Act II of 1899. Clause (b) of subsection (1) of that section provides that "any person executing or signing otherwise than as a witness, any other instrument chargeable with duty, without the same being duly stamped,

* Criminal Revision No. 675 of 1909 from an order of S. B. Daniels, Sessions Judge of Moradabad, dated the 4th of September 1909.

shall, for every such offence, be punishable with fine, which may extend to five hundred rupees." It appears that in the year 1901 certain persons, members of the same family, submitted disputes about the division of the family property to the arbitration of another member of the same family, namely, Brij Bhukhan Saran. This gentleman duly made and published his award, which was acted upon by the parties. There are witnesses to the award, persons who signed expressly in that capacity. Immediately under their signatures are the signatures of the applicants. They signed under the head "signature of the heirs." It is admitted that all the applicants, who thus signed the award, had already signed the submission to the arbitration. Although it is not very material to the question before me, it may be mentioned that in 1908 it became necessary in another suit to produce the award. It was objected to by one of the parties to the suit as not being stamped. As the result of this objection a penalty of over Rs. 4,000 was imposed, which on appeal to the Board of Revenue was reduced to Rs. 2,200. The matter having become public in this manner, a criminal prosecution was instituted against the applicants, under section 62 of the Indian Stamp Act, II of 1899, as already mentioned. The result of the Sessions Judge's order being that the present applicants have been fined Rs. 150 each, the question before the court is, whether under the circumstances the applicants signed the award "otherwise than as witnesses," within the meaning of sub-section (1), clause (b) of section 62 of Act II of 1899. It is impossible to say that every person who writes his name on a document of this nature otherwise than as a witness has committed an offence under the Act, because, if that was so, even a Judge who signed the document as an exhibit would be liable to a fine. It is a pity no definition is given in the Act as to the meaning of the expression "signing otherwise than as a witness." Supposing that in the present case the applicants had been no parties to the submission to arbitration and had signed the award as an agreement, and, notwithstanding the fact that they were no parties to the submission, they intended to be bound by the award, I think that they might be said to have signed the award otherwise than as witnesses, within the meaning of the section. Again, if there had been some informality in the

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submission or in the arbitration proceeding and interested parties had signed as evidence of a waiver of the irregularity, they might perhaps be said to have signed otherwise than as witnesses. In the present case, however, it must be assumed that the submission, the arbitration proceedings and the award were all perfectly regular. If they were, the award bound the applicants just as effectually without their signatures as with them. The document was complete when the arbitrator signed and published his award, and the only result of the signatures of the applicants was to avoid the necessity of proving perhaps at some remote date the regularity of the arbitration proceedings. It must be remembered that a penal Act must be read as favourably as possible for the subjects. The arbitrator, who was the real person who executed and signed, and whose execution and signature was necessary, was never proceeded against. I am informed that he died long before the institution of the present prosecution. The expression "executed" with reference to instruments is defined in section 2 as meaning "signed." I think the word "executing" in section 62 must mean very much the same as "signing" and this must be held to mean "signing" so as to complete the document so that it may have full legal effect. In my opinion under the circumstances of the present case the applicants ought not to have been convicted. I accordingly allow this application; set aside the orders of the learned Magistrate and the Sessions Judge; acquit the applicants, and direct that the fines, if paid, be refunded.

Application allowed.