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ASMA BIBI v. ABDUL SAMAD KHAN.

(2) A translation of this is to be found on p. 112, article 734 (125), of Tagore Law Lectures for 1891-92, Vol. I, in which instead of 4,000 (four thousand) four hundred *dirhams* are mentioned. This is undoubtedly wrong. This wrong translation seems to have led Sir R. Wilson to state in a foot-note on p. 119, 3rd edition of his Anglo-Muhammadan Law, that "the dower settled by Mohamed on each of his many wives is said to have been five hundred or four hundred *dirhams* (Mishkat, p. 101)."

According to the authorities cited the money value of 10 (ten) *dirhams* is something between Rs. 3 and 4, and thus there is no substance in this appeal, which we dismiss with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1910
January 5.

Before Mr. Justice Sir George Knox and Mr. Justice Piggott.

EMPEROR *v.* RAMESHAR DAS.*

Act No. II of 1899 (*Indian Stamp Act*), *sections* 27, 64 (*a*)—*Execution of document not containing statement of facts affecting duty—Stamp.*

Certain property was sold for Rs. 20,000 to one R, who paid Rs. 1,000 in cash and agreed to give the vendors credit for Rs. 19,000 to be drawn against as required. Shortly afterwards the parties agreed to rescind the contract and R resold the property to his vendors, giving them a conveyance in which the consideration was stated to be Rs. 1,000 in cash, no mention being made of the extinction of his liability to pay the remaining Rs. 19,000. *Held* on these facts that R had committed an offence within the purview of section 64 (*a*) of the Indian Stamp Act, 1899.

THE facts of this case were as follows :—

Certain property was sold by Mahadeo Prasad and Sita Ram to Rameshar on 14th September, 1908, for the sum of Rs. 20,000. Out of this sum Rs. 1,000 only were paid in cash, and the remainder, Rs. 19,000, was expressed in the sale-deed as having been left in deposit with the vendee by the vendors, who intended to draw upon the deposit from time to time. As it happened, however, no portion of the deposit was drawn upon. A few months later, on 2nd March, 1909, Rameshar executed a sale-deed by which he re-conveyed the same property to the original vendors. The consideration for this re-sale was stated in the

* Criminal Revision No. 687 of 1909, from an order of Muhammad Ali, Sessions Judge of Mirzapur, dated the 14th August 1909.

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sale-deed to be Rs. 1,000 only; and, accordingly, this deed was executed on stamp paper of the value of Rs. 10. There was a reference in this deed to the former sale-deed; beyond that, there was no allusion to the Rs. 19,000. When the deed was presented for registration the Sub-Registrar, who happened to remember that the former sale-deed was for Rs. 20,000, impounded it and sent it to the Collector. The Collector, without calling upon Rameshar to make good the deficiency together with a penalty, directed him to be criminally prosecuted. Proceedings were thereupon taken against Rameshar, with the result that he was convicted and sentenced under section 64 (*a*) of the Stamp Act to a fine of Rs. 400, reduced, on appeal, to Rs. 100. He thereupon applied in revision to the High Court.

Mr. *A. P. Dube*, for the applicant, contended that the prosecution and conviction were bad in law. The Collector had no jurisdiction to order the prosecution unless and until he had proceeded under section 40, cl. (*b*), of the Stamp Act to realise the deficiency and penalty. The language of section 40 was imperative—"he shall adopt the following procedure." The Collector's power to order prosecution was a matter of mere discretion; section 40 laid down what it was his duty to do before exercising such discretion. The Stamp Act was a fiscal enactment and must be construed strictly. The procedure of the Collector was calculated to frustrate the object of the enactment which was to protect against loss of revenue, and was, therefore, clearly wrong. He ought, in the first instance, to have asked the party to make good the deficiency with fine. He relied on *Empress* v. *Soddanund Mahanty* (1) and *Empress* v. *Janki* (2). He further contended that there was no intention to defraud. The former deed was mentioned distinctly in the letter at the very outset. The first deed would not have been mentioned at all if there had been a wish to defraud. The second deed had for its object the restoration of the *status quo;* and all that the parties had to do was to reconvey the property and get back the money that had actually passed, namely, Rs. 1,000. So the consideration for the second deed was Rs. 1,000 only. Moreover, the stamp duty was payable by the vendees (section 29, cl. (*c*), of the Stamp Act); the vendor,

(1) (1881) I. L. R. 8 Calc., 259. (2) (1882) I. L. R., 7 Bom., 82

Rameshar, could therefore have no interest in undervaluing the consideration; he had no motive for committing a fraud on the revenue.

Mr. *A. E. Ryves* (Government Advocate), for the Crown, contended that the main question in the case was as to what was the true consideration for the second deed, *i.e.* whether the cancellation of the credit of Rs. 19,000 was also part of the consideration or not. In the present case the whole of the Rs. 20,000 had actually passed at once, only Rs. 19,000 were deposited with the vendee as with a bank. The parties were bankers; and the Rs. 19,000 were deposited with Rameshar just as the sum might be deposited with the Allahabad Bank. He further contended that the crucial test in the case was, "To whom did the Rs. 19,000 belong after the execution of the second sale-deed?" There could be no doubt that the deposit of Rs. 19,000 was no longer kept alive, and that the original vendors could not now claim to get this sum from Rameshar. It was obvious, therefore, that the real consideration for the second deed was Rs. 20,000 and not Rs. 1,000.

Mr. *A. P. Dube* was heard in reply.

KNOX and PIGGOTT, JJ.—The essential facts of this case are as follows:—On the 12th of September, 1908, Mahadeo Prasad and Sita Ram executed a sale-deed conveying certain property to Rameshar Das, the applicant in revision now before this Court. The consideration for the sale was Rs. 20,000, of which only Rs. 1,000 was paid down in cash, the covenant for the remainder being that Rameshar Das should keep the sum of Rs. 19,000 in deposit to the credit of the vendors, the latter to draw upon it at their convenience on tendering receipts. Before anything more was paid the parties repented of their bargain. Rameshar Das reconveyed the same property to Mahadeo Prasad and Sita Ram, the sale-deed purporting to be simply for a consideration of Rs. 1,000 paid down in cash. The courts below have held that Rameshar Das thereby committed an offence punishable under section 64 (*a*) of the Indian Stamp Act (Act No. II of 1899), in that he executed an instrument in which all the facts and circumstances required by section 27 of the said Act were not fully and truly set forth. This section requires that the consideration, if

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any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

The first point taken in revision is that the Collector should not have instituted this prosecution without first levying the deficient duty and penalty on the deed in question. This the Collector could not have done. The deed was fully stamped on a sum of Rs. 1,000, the consideration as stated therein. The whole point of the prosecution is that the consideration for the sale is not fully and truly set forth. We are of opinion that it is not. The actual consideration for the sale-deed of the 2nd of March, 1909, was the cash payment of Rs. 1,000 plus an oral agreement cancelling the liability under which Rameshar Das lay to pay Rs. 19,000 on demand to the vendees under the said deed. It seems to us that we are not even concerned with the question whether, in the event of the said vendees, namely, Mahadeo Prasad and Sita Ram, behaving dishonestly and instituting a suit to enforce the provisions of the original sale-deed of the 12th of September, 1908, the Civil Court could, in view of the provisions of the Indian Evidence Act, permit Rameshar Das to prove this oral agreement. The question we have to answer is what was the real consideration for the second sale-deed, and that consideration admittedly was not the mere payment of Rs. 1,000.

We have next to consider whether Government has as a matter of fact been defrauded of stamp duty. Had the consideration been fully and truly set forth in the sale-deed, it seems clear that in view of the provisions of section 24 of the Indian Stamp Act, the conveyance in question would have been chargeable with stamp duty upon the full sum of Rs. 20,000. The only exception to be found in section 24 is the proviso in favour of a mortgagee purchasing the equity of redemption. But this is obviously inapplicable to the facts before us, and only serves to make it clearer that on a conveyance like the present stamp duty must be calculated on the cash payment plus any debt or liability thereby remitted or transferred. A suggestion was thrown out in the course of argument that the parties might have availed themselves of the provisions of article 17 or article 55 of the first schedule to the Indian Stamp Act, so as to cancel the

liability in respect of this sum of Rs. 19,000 upon an instrument bearing a stamp duty of Rs. 5 only. The answer to this argument is to be found in the provisions of sections 5 and 6 of the Indian Stamp Act. The sale-deed of the 12th of September 1908 had transferred to Rameshar Das full proprietary title in the land in question. (*Vide* I. L. R., 11 All., 244.) Because of the provisions of section 54 of the Transfer of Property Act (Act IV of 1882), this title could not be re-transferred to the original vendors except by a registered instrument. Such instrument, in whatever way the parties might elect to word it, would necessarily contain provisions bringing it within the definition of a "conveyance" in section 2, clause 10, of Act II of 1899. It would therefore be liable to duty as a conveyance upon the full consideration which actually passed between the parties. Finally, it is necessary for a conviction in this case that we should be prepared to hold that the sale-deed of the 2nd of March, 1909, was drafted in the particular form in which it actually stands, "with intent to defraud the Government." The courts below have held that it was; and it would certainly be impossible for us to say on revision that this finding must be reversed because we were of opinion that there was no evidence on the record upon which such finding could properly be based. We think, moreover, that the omission in the sale-deed of March, 1909, to make any reference whatever to the unpaid consideration, could only have been intended to avoid any question being raised as to the liability of the parties to stamp duty over and above that due on the sum of Rs. 1,000. By evading the obligation which lay upon them, the parties have defrauded the Government of stamp duty, just as much as they would have done if Rameshar Das had in the first instance paid the original vendors Rs. 19,000 in cash, taken the receipt for the same upon a one anna stamp, and the parties had then executed a deed of sale purporting to convey the property for a consideration of Rs. 1,000. It is to meet such abuses that section 27 of the Indian Stamp Act was framed, and we think that the present case is within the purview of that section. We dismiss the application for revision.