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joint estate between them." But their Lordships further held that where the widows could not go on peaceably in the joint enjoyment of the property, they could by mutual agreement or otherwise separately hold the property, although they had no right to partition in the proper sense of the term, and that the share of one would go by right of survivorship to the other, notwithstanding the separation. In the case before us, the two widows, although entitled to enjoy the property, appear to be unable to do so peacefully unless they divide it; in fact the plaintiff in this suit has tried to exclude the defendant altogether from the whole of the property left by her husband, admitting her only to a bare right to maintenance. That being so, we are unable to hold that the defendant has no right to apply for a partition such as would enable her to enjoy her share of the property of her husband for her life. Such a partition would in no way affect the plaintiff's right of survivorship in the event of her surviving the defendant.

The appeal therefore fails and is dismissed with costs.

*Appeal dismissed.*

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## REVISIONAL CRIMINAL.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.*

EMPEROR v. BALMAKUND.

*Act No. II of 1899 (Indian Stamp Act), section 65—Receipt—Money remitted by postal money order and receipt signed on post office form—Further receipt not exigible from payee.*

Where money is remitted by postal money order and the payee has signed the receipt in duplicate on the post office form he cannot legally be compelled to give a further receipt to the payer, and his refusal to do so will not render him liable under section 65 of the Indian Stamp Act, 1899.

THE facts of this case were as follows :—

One Gotting sent a postal money order for Rs. 34 from Moka-mah to Balmakund at Allahabad, in part payment of a particular debt. Balmakund signed the usual receipts on the money order form; and the receipt intended for the remitter was sent in due course by the post office to Gotting and received by him. He thereafter demanded from Balmakund a duly stamped receipt

\* Criminal Revision No. 338 of 1911 from an order of C. Rustamji, Esq., Sessions Judge of Allahabad, dated the 14th of January, 1911.

which should mention that the payment was received on account of a certain specified debt. Balmakund refused to give this further receipt. Gotting thereupon complained to the Collector, who sanctioned the prosecution of Balmakund under section 65 of the Stamp Act. The prosecution resulted in a conviction and a sentence of Rs. 50 fine, which were upheld by the Sessions Judge in revision. Balmakund thereupon applied in revision to the High Court.

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Munshi *Gulzari Lal*, for the applicant :—

The money order receipt is a good and sufficient receipt, and it was not incumbent upon the applicant to give another receipt. The definition of "receipt" contained in section 2, clause (23) of the Stamp Act, does not make it necessary in a receipt to say on what account the money has been received; it is enough if it is an acknowledgement of payment. A receipt need not be addressed to any particular person. The money order receipt is an acknowledgement of payment of the sum "specified on the reverse." The name of the payer and the amount are both "specified on the reverse." The receipt is therefore, a complete and sufficient receipt. The question remains whether it is a good receipt; it is, because by Government notification a money order receipt is exempt from stamp duty. If a stamp of one anna were put on the money order receipt there could be no question that it would be a "duly stamped receipt" within the meaning of section 30 of the Stamp Act, and that no second receipt could be demanded. The stamp was not put on it as the necessity for it was obviated by the Notification. There are other cases of exemption, for example, a receipt for a barrister's fee. If a barrister gives an unstamped receipt for his fee, a second "duly stamped receipt" cannot be demanded from him. Strictly speaking, the money was actually paid by the post office to the applicant, and it was the post office alone who could demand a receipt. As a matter of fact, two receipts were given.

The Government Advocate (Mr. *A. E. Ryves*), for the Crown :—

Mr. Gotting had several accounts with Balmakund. The money which he sent was in respect of one particular account which he specified in the money order coupon. He was entitled

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to have the money applied towards that particular account and to obtain a receipt specifying accordingly. The money order receipt is not a good and sufficient receipt as it does not mention the account on which the money is paid. To hold otherwise would lead to great confusion and inconvenience. The money order receipt is not intended to constitute or take the place of a receipt by the payee to the remitter. Its function is merely to discharge the liability of the post office; to satisfy the remitter that the money entrusted by him to the Post Office has been duly paid. The post office acts merely as an agent. Then, the money order receipt cannot be called a "duly stamped" receipt within the meaning of section 30; for it is not "stamped" at all. The object of the Government in exempting money order receipts from stamp duty was only to obviate the necessity of an inquiry in each case by the post office as to whether the payment was without consideration or came under any other exemption or not.

RICHARDS, C. J. and BANERJI, J.—This is an application in revision. The facts are undisputed and very simple. One Mr. Gotting sent a money order for Rs. 34, to the applicant Balmakund. Gotting intended that the Rs. 34 should go in part payment of a certain debt due on a bond. The money was received on the 14th of September, 1910, by Balmakund, who, in the usual way, signed in a duplicate receipt and delivered the same to the post office official. One receipt is in the following form:—

ACKNOWLEDGEMENT.

"This is a duplicate receipt which will be returned by the post office to the remitter.

"I acknowledge to have received payment of money order No. 3438, for the sum specified on the reverse.

"Date.....1910. Signature (in ink) of payee, or thumb impression of payee if illiterate."

The reverse side is in the following form:—

ON POSTAL SERVICE.

"Amount of order (in figures).—Rs. 34-0-0.

"Name of remitter.—Mr. A. W. Gotting.

"Address.—Locomotive Department.

"Stamp of the office of issue.—Mokamah, Patna."

The other receipt is in the following form:—

"Received payment of the sum specified on the reverse.

"Dated.....1910, Signature (in ink) of payee or thumb impression if payee is illiterate.

"Paid by me Rs.....As....

"Signature and designation of official who paid the amount."

On the reverse are the particulars of the amount of the order in words, the name and address of the payee in full. This latter receipt is kept by the post office officials. Mr. Gotting, for reasons of his own, (probably because he was anxious to have a receipt which would show on the face of it an acknowledgement from Balmakund of part payment of the particular debt which he intended in part to discharge) demanded from Balmakund a duly stamped receipt. Balmakund refused, contending that the receipt which he had given when he received the money order was sufficient. Later on, on the 30th of October, 1910, however, Balmakund did send a stamped receipt but more or less under protest, still contending that the receipt which he had signed was sufficient compliance with the law. Subsequently sanction was obtained for the prosecution of Balmakund under section 65 of the Stamp Act. It was probably due to apprehension of such prosecution that Balmakund signed the stamped receipt to which we have just now referred. The result of the prosecution was that Balmakund was fined Rs. 50. An application was made to the Session Judge in revision which application, however, was refused. Hence the present application to this Court.

It is contended on behalf of the applicant that under the circumstances the conviction is illegal. Mr. *Ryves*, on behalf of the prosecution, admits that the punishment is somewhat severe, but contends that the conviction was quite legal, and that an offence was committed under the Stamp Act. The question for us to decide is whether or not the conviction is legal. Section 63 of the Stamp Act provides that any person who, being required under section 30 to give a receipt, refuses or neglects to give the same, shall be liable to a fine which may extend to Rs. 100. Section 30 is as follows:—"Any person receiving any money exceeding Rs. 20 in amount, or any bill of exchange, cheque or promissory note, for an amount exceeding Rs. 20, or receiving in satisfaction of a debt any movable property exceeding Rs. 20 in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same. It is clear that had Mr. Gotting made the payment himself or through an agent, he would have been entitled to get a receipt.

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for the amount of money which he paid, and that such receipt should be duly stamped. It is also clear that under such circumstances Balmakund would have been liable to a conviction if he refused to give such duly stamped receipt. The money, however, was remitted through the post office in the manner to which we have already referred. Section 9 of the Stamp Act provides that the Governor General in Council may by rule or order published in the "Gazette of India" reduce or remit certain duties, including the duty payable upon certain instruments. By Notification No. 735-S. R., dated the 17th of February, 1899, the Governor General in Council, in the exercise of the powers conferred by the aforesaid section, remitted the duties chargeable on certain instruments which are specified at the foot of the order. No. 30 is "Receipt endorsed by the payee on a postal money order." It would thus appear that Balmakund gave a receipt in duplicate to the post office authorities, acknowledging the receipt of the money which Mr. Gotting had sent, and that that receipt is expressly exempted from duty by an order of the Governor General in Council duly made in exercise of the powers conferred by the Stamp Act itself. The actual person who made the payment was not Mr. Gotting. It was the post office official. This official got, as he was entitled to get a receipt in duplicate, and the post office regulation provided that the duplicate was to be given by the post office authorities to Mr. Gotting. If it can be said that the money was paid by Gotting at all, it can only be upon the ground that the post office official was the agent of Gotting. It seemed to us most unreasonable that a person who receives money from an agent and gives a valid receipt to such agent, should be required to give another receipt to the principal. Had the money been sent by the hand of an ordinary agent instead of through the post office it could not, we think, be argued for one moment that the agent would be entitled to receive a duly stamped receipt, and that his principal would be entitled to receive a second duly stamped receipt. What reasonable object could be gained by the giving of a second receipt in the present case? Section 30 does not require a person receiving money to specify the particular purpose for which the money was paid. He is only required to give a receipt for the sum paid. Under these circumstances we think

that Balmakund ought not to have been convicted under section 65 for having refused to give a second receipt to Gotting. We accordingly allow the application, set aside the conviction and sentence, and direct that the fine, if paid, be refunded.

*Conviction set aside.*

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## REVISIONAL CIVIL.

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December, 20.

*Before Mr. Justice Karamat Husain and Mr. Justice Chamier.*

AJUDHIA PRASAD (APPLICANT) v. RAM LAL AND ANOTHER (OPPOSITE PARTIES).\*

*Criminal Procedure Code, section 195 (7), clauses (a), (b) and (c)—Sanction to prosecute—Sanction refused—Further application—"Case"—"Principal court of original jurisdiction."*

In a suit for arrears of rent exceeding Rs. 100, a decree was passed in favour of the appellant. In course of execution proceedings the respondents made certain statements which, according to the appellant, were false. The appellant applied for sanction to prosecute them under section 195, clause (7) of the Code of Criminal Procedure. The sanction was refused by the Assistant Collector.

*Held* on application made to the District Judge to grant sanction, that no such application lay. The "case" in connection with which an offence was alleged to have been committed was the proceedings in execution, from which no appeal lay, and the District Judge was not in relation to such proceedings the "principal court of original jurisdiction."

The facts of this case are thus stated in the following order of TUDBALL, J., referring the case to a Bench of two Judges:—

"The facts of this case are briefly as follows:—A suit for arrears of rent was brought in the court of an Assistant Collector of the first class, for a sum of over one hundred rupees. It was decreed, and the decree-holder subsequently brought the decree into execution. In the course of the execution proceedings two statements were made by the opposite parties which the present applicant deems to be false. He applied to the court of the Assistant Collector for sanction. That officer refused. Thereupon the present applicant went to the District Judge to have the order refusing sanction set aside. The District Judge held that he had no jurisdiction in the matter and that clause (c) of sub-section 7 of section 195 of the Code of Criminal Procedure applied to the matter, as there is no appeal in execution proceedings in the Revenue Court. He held that, as a District Judge, he was not the principal court of original jurisdiction within the meaning of clause (e), sub-section 7. The applicant has come here in revision and pleads that the District Judge has refused to exercise jurisdiction which the law has given him. On behalf of the opposite parties it was pleaded that in all cases in which no appeal lies, in order to find out which is the principal court of original jurisdiction within the meaning of this clause, one must look to the nature of the case. If it is a criminal case in which no appeal lies, then the principal court of original

\* Civil Revision No. 37 of 1911.