

accordance with the principles on which this question has always been considered under the English law and ought to be followed by us. We dismiss this appeal with costs.

*Appeal dismissed.*

## FULL BENCH.

*Before Justice Sir George Knox, Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.*

SOMWARPURI (PETITIONER) v. MATA BADAL AND OTHERS  
(OPPOSITE PARTIES);\*

*Act (Local) No. II of 1903 (Bundelkhand Alienation of Land Act), section 17—  
Mortgage executed by Collector.—Stamp—Act No. II of 1899 (Indian Stamp Act), section 8.*

*Held* that a mortgage executed by a Collector under the provisions of section 17 of the Bundelkhand Alienation of Land Act, 1903, is not exempt from stamp duty.

THIS was a reference by the Board of Revenue under section 57 of the Indian Stamp Act, 1899, under the following circumstances. A decree upon a mortgage was passed by a munsif against Mata Badal, who was a member of an agriculturist tribe to whom the Bundelkhand Alienation of Land Act, 1903, applied. The munsif accordingly transferred the execution of the decree to the Collector under the provisions of section 17 of the said Act, and the Collector offered the decree-holder, Mahant Somwar-puri, Secretary of the Akhara Niranjani, a usufructuary mortgage of the judgement-debtor's property for twenty years in full satisfaction of the decree. The decree-holder accepted this offer and the Collector thereupon executed a mortgage-deed in accordance with the powers conferred upon him by the Act.

On this reference—

Mr. A. E. Ryves, for the Government :—

The document does not require any stamp. This is an ordinary Civil Court decree transferred under the Code of Civil Procedure to the Collector for execution. If the Collector had executed a lease it would not have required any stamp. It will not be equitable to demand stamp-duty twice, as for this very sum due stamp-duty had once been paid. There is a further

1916

JAGANNATH  
PRASAD

v.

THE  
U. P. FLOUR  
AND OIL  
MILLS COM-  
PANY, LIMIT-  
ED.

1916

March, 10.

\* Civil Miscellaneous No. 316 of 1915.

1916

SOMWARPURI  
v.  
MATA BADAL.

difficulty as to how the stamp duty is to be realized if the judgement-debtor does not care to pay. Different practices have grown up in different districts in a case like this. In some a registered instrument bearing one anna stamp is resorted to, in some of the others only an instrument bearing an anna stamp is executed and in others again only an instrument on plain paper is adopted. Hence this reference has been made to insure uniformity. I refer to item no. 7 of remissions in Appendix C of the Stamp Manual. There is another way of looking at this matter. Section 3 of the Stamp Act exempts the Government from the stamp-duty in the case of instruments which benefit the Government or are executed on behalf of the Government; why should the Government pay any duty when the document does not concern it? As to registration the Board of Revenue has no power to refer the matter to the High Court for opinion.

Babu *Sheodihal Sinha*, for the decree-holder :—

The Collector should order the mortgagor to pay the stamp-duty. Option should be given to him at first. If he does not pay then the stamp-duty should be realized from him as the costs of execution. All that we want is a valid deed without any blemish so that there might not be any dispute in the future.

KNOX, BANERJI AND TUDBALL JJ. :—The proceedings before us consist of a reference by the Chief Controlling Revenue Authority under section 57 of Act No. II of 1899. The case as stated to us is that on receipt under section 17 of the Bundelkhand Alienation of Land Act (II of 1903), of a decree passed by the Munsif of Allahabad against Mata Badal and others, the Collector of Allahabad offered the decree-holder, Mahant Somwarpuri, Secretary of the Akhara Niranjani, a usufructuary mortgage of the judgement-debtor's property for twenty years in full satisfaction of the decree. The decree-holder expressed his willingness to accept the offer and the Collector therefore executed a mortgage-deed in accordance with the powers conferred on him under the said Act II of 1903.

We have perused the particular deed and have considered its provisions. The question asked by the Chief Controlling Revenue Authority is whether this mortgage deed requires to be stamped and registered.

1916

SOMWARPURI  
v.  
MATA BADAL

There is only one section in Act No. II of 1899, which sets out what instruments are instruments on which no duty should be chargeable. The Government has, however, power to remit duties under this Act in certain cases. As regards section 3 of Act No. II of 1899, we are of opinion that this mortgage-deed is not an instrument executed by, or on behalf of, or in favour of the Government. It is, as it purports to be, an instrument executed by the Collector of Allahabad, under the provisions of section 17 of the Alienation of Land Act No. II of 1903. Such instrument can in no way be said to be executed in favour of, or on behalf of Government; if anything, it is an instrument executed in favour of the mortgagee by the Collector on behalf of the mortgagor. No remission under which this document will fall has been pointed out to us and we know of none. Our attention was directed to the remissions set out in Appendix C of the Stamp Manual. There is a Government Order dated the 31st August, 1909, which expressly remits duty upon a fresh mortgage and executed in lieu of a previous mortgage-deed for the purpose of giving effect to the provisions of section 9, sub-section (2), of the Bundelkhand Alienation of Land Act, 1903. The document before us can in no sense be said to have been executed under section 9 of the Bundelkhand Alienation of Land Act. The existence of this exception points, if anything, to the conclusion that it was not the intention of Government to remit the duty on a document executed under section 17. This is our answer to the reference made to us under the Stamp Act.

With reference to the question whether the mortgage-deed requires to be registered, we know of no power conferred upon the Board of Revenue to refer questions to this Court under the Registration Act.

We therefore do not answer this part of the question.

*Record returned.*