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INDRAJ v. BROTHER CLEMENT, MISSIONARY.

although he had previously refused to purchase. It does not appear very clearly from the report what was the custom found to exist. We think it can hardly be contended that where the custom is that the first offer must be made to the co-sharers the vendor must, after offering the property to the co-sharers, find a stranger willing to buy, conclude a bargain with him, and then return to his co-sharers and offer the property to them. Surely in a case like the present the vendor has complied with the custom if he has informed the pre-emptor of his desire to sell and ascertained from him either that he does not wish to buy or the price beyond which he is not willing to go. It would almost seem that a custom which required the vendor to do more than this would be an unreasonable custom. Of course the vendor must give clear information of his intention to sell, and we are very far from saying that if the pre-emptor expressed his willingness to purchase at a specific price the vendor would be justified in selling the property for practically the same price to a stranger without first informing the pre-emptor. In other words the vendor must act *bonâ fide* and the pre-emptor must have a fair opportunity of purchasing the property. Under the circumstances of the present case we think the view taken by the court below was correct and dismiss the appeal.

Appeal dismissed.

FULL BENCH.

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

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February, 9.

STAMP REFERENCE BY THE BOARD OF REVENUE.*

Act No II of 1899 (*Indian Stamp Act*), *section* 4—*Stamp—Settlement—Gift of property made by one deed—Agreement to secure expenses of donor entered into by another.*

Two brothers executed deeds each in favour of the other. One was a deed of gift of all the property of the executant, and it was stamped to its full value. The other was a deed coming within no known category, but it provided for the expenses during his life-time of the executant of the deed of gift and hypothecated certain property to secure the payment thereof; only a portion of the property thus hypothecated, however, was included in the deed of gift.

The second document bore a stamp of Rs. 10.

* Civil Miscellaneous No. 620 of 1914.

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Held that the two documents were part of the same transaction and amounted to a settlement within the meaning of section 4 of the Stamp Act, and the stamp duty paid was sufficient.

THIS was a reference by the Board of Revenue under section 57 *(b)* of the Indian Stamp Act, 1899. The facts out of which the reference arose are fully set forth in the order of the Court.

Mr. *A. E. Ryves*, for the Crown.

KNOX, RAFIQ and PIGGOTT, JJ.—On the 15th of May, 1914, two brothers, Tribhuwan Dat Sukul and Maharaj Sumeshwar Dat Sukul, executed each of them a document. The deed of gift executed by Tribhuwan Dat Sukul has been endorsed by us as exhibit A, and the deed executed by Maharaj Sumeshwar Dat Sukul has been marked as exhibit B, and they will be alluded to in the course of this judgement in these terms.

Deed A is said to bear a stamp of Rs. 1,125. Deed B bears a stamp of Rs. 10. When the two documents were taken to the registration office, deed B was impounded, and on its coming before the Deputy Commissioner, Sitapur, that officer came to the conclusion that the stamp required was a stamp of Rs. 360. He also considered that penalty of Rs. 700 should be paid by Maharaj Sumeshwar Dat. Sumeshwar Dat appealed from the decision of the Deputy Commissioner to the Board of Revenue.

The Board of Revenue were unable to come to any conclusion as to what was the right and proper stamp to impose, and referred the matter to this Court under section 57 of the Indian Stamp Act.

We have had both deeds read to us, and we have had the assistance of the learned Government Advocate in considering the matter. Deed B is very inartistically drawn up. The language in which it is expressed is of such a dubious kind that it has not been easy to come to a decision on the question referred.

Briefly stated the case is as follows :—Tribhuwan Dat Sukul in consideration of love and affection and the promise to be maintained by his brother, executed a deed of gift of his immovable and movable property. It is this deed which has been stamped with a stamp of Rs. 1,125. Maharaj Sumeshwar Dat Sukul, as said above, on the same date executed deed B. In that deed he promises that during the life-time of Pandit Tribhuwan Dat he will pay whatever expenses may be required on account of food, conveyance, travelling for pilgrimage, charity, clothing &c.,

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provided that Tribhuwan Dat live permanently in the ancestral house or in the house in which he may with his consent put him up and have no concern with the quarrelsome persons who created disunion between Pandit Tribhuwan Dat and himself.

There is a further clause which lays down the maximum amount per mensem which Tribhuwan Dat may expend for charity and railway journeys, &c. Up to this maximum Maharaj Sumeshwar Dat Sukul agrees to pay. There is also a clause regarding money "required for expenses" and how that is to be assessed: no definite sum is given. Certain property which is detailed in the deed is hypothecated and the deed says that that property "will be responsible for the expenses of Pandit Tribhuwan Dat wherever and to whomsoever it is transferred". The property scheduled differs, save and except one house, from the property scheduled in deed A.

We have tried to see whether deed B can come within any of the deeds set out in schedule I of the Indian Stamp Act, but we cannot find any article which exactly covers the deed.

Looking broadly to the two documents, we are satisfied that the deed B is one which comes within section 4 of the Indian Stamp Act. The transaction before the parties may fairly be said to come within the word "settlement". The two instruments were intended by the parties to be employed in completing this one transaction and the principal instrument as determined by the parties has been stamped and more than sufficiently stamped.

Deed B has in our opinion been properly stamped and more than sufficiently stamped in accordance with the provisions of section 4 of the Act.

We have not overlooked the fact that in dealing with an Act of this kind we have to construe the Act in favour of the subject.

Let a copy of this our judgement be sent to the Chief Controlling Revenue Authority, *i. e.*, to the Board of Revenue, as our opinion on the matter referred to us.