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like a gift or exchange from a Hindu widow or a member of a joint Hindu family, which cannot be pre-empted by the plaintiff, it would be open to the vendee to set it up as a defence to the claim for pre-emption of his subsequent sale deeds. But where the first transaction is a sale deed and is being pre-empted by the plaintiff himself and a decree is to be given to the plaintiff, no defence can be based on it so as to defeat the claim for pre-emption of the subsequent sale deeds. This view is consistent with the view which prevailed before the Agra Pre-emption Act came into force and we have no reason to imagine that the legislature intended to alter that law. Accordingly there can be no real difficulty in the case of successive sale deeds.

Our answer to the first question, therefore, is that if the vendee had before his purchase acquired a share with a defeasible title (which is not pre-empted by the plaintiff) he can defeat the claim for pre-emption brought by the plaintiff who had an indefeasible title.

Our answer to the second question is that if the deed of exchange relied upon by the vendee, which cannot be pre-empted, turns out to be a sale deed and the plaintiff is pre-empting that sale deed, the vendee cannot successfully defeat the claim of pre-emption on the strength of this ostensible deed of exchange which is found to be in reality a sale deed.

REVISIONAL CRIMINAL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice King*

EMPEROR v. RAGHUBAR DAYAL*

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Stamp Act (II of 1899), sections 2(10), 62(b); article 5, exemption (a)—Entries in account books of sales of ornaments, signed by the sellers—"Conveyance"—"Memorandum of agreement for sale"—Exemption from stamp duty—Purchaser getting unstamped receipt written and signed by the

*Criminal Revision No. 329 of 1933, from an order of L. V. Ardagh, Sessions Judge of Jhansi, dated the 3rd of March, 1933.

seller—Abetment of offence under section 62(b)—Intention to defraud not necessary.

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The accused, who was a buyer of bullion and ornaments, used to get each seller to make an entry in the accused's account books giving the seller's name and a description of the goods purchased and the price paid, together with the signature of the seller thereon. These entries were all unstamped. *Held* that the transactions of sale were completed by delivery and payment of price, and so the entries did not transfer any property and were not conveyances within the meaning of section 2(10) of the Stamp Act. The entries were merely memoranda of completed sales of goods, and were exempt from stamp duty by article 5, exemption (a) of the Stamp Act. But inasmuch as some of the entries recited not merely the articles sold and the price, but contained also an acknowledgment that the price had been received by the seller, they amounted to receipts and were liable to a stamp duty of one anna each. The duty of stamping the receipts lay primarily on the sellers who executed them; but as the accused got the sellers to make and sign these entries in his account books, he should be held to have instigated or conspired with the sellers to execute unstamped receipts for his benefit and to have abetted an offence under section 62(b) of the Stamp Act. A criminal intention or an intention to defraud the Government is not necessary under section 62(b).

Dr. N. C. Vaish, for the applicant.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

SULAIMAN, C.J. and KING, J.:—This is an application in revision against a conviction under section 62 of the Indian Stamp Act read with section 109 of the Indian Penal Code.

The accused Raghubar Dayal is a *sarraf* engaged in the business of buying gold and silver or ornaments of precious metals. His account book was filed in a certain criminal case and the officer in charge of the record room reported to the Collector that the account book contained over 300 entries which purported to be conveyances of movable property and had not been stamped. The Collector ordered the prosecution of the accused and he was charged in respect of three alleged offences. It appears

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that when the accused made a purchase of gold or ornaments from a client, he got the client to make an entry in the account book giving the client's name and a description of the goods purchased and of the price paid, and got this entry signed by the client. The first entry which forms the subject-matter of the charge runs as follows: Two gold *beejas* mounted with precious stones, one pair of *karanphuls* set with diamonds, 2 *bendas*, 2 *sees-phul*, 1 *bendia*, 2 *jhunkas*; all sold for Rs.710 cash of the current coin. This entry was made and signed by the seller Shiam Lal. The other entries are similar except that they also expressly contained acknowledgments that the purchase money had been received by the seller.

The trial court found that these entries amounted to "conveyances" of movable property within the meaning of section 2(10) of the Stamp Act and that the accused had intentionally defrauded Government by taking these conveyances although they had not been stamped, and therefore convicted the accused under section 64(c) of the Stamp Act and sentenced him to a fine of Rs.250.

The accused appealed to the learned Sessions Judge who agreed with the trial court that the entries in the account book of the accused amounted to "conveyances" within the meaning of the Stamp Act and should have been stamped as conveyances. He found, however, in the appellant's favour that he did not realize that the entries required to be stamped and therefore there was no intention of defrauding Government. He further found that although the primary liability of paying the stamp duty was upon the sellers who had executed the conveyances, it was proved that the accused had abetted the execution of unstamped conveyances and therefore was guilty of offences under section 62(b) of the Stamp Act read with section 109 of the Indian Penal Code. The fine of Rs.250 was reduced to Rs.150.

It has been argued before us that the documents in question are not "conveyances" within the meaning of

the Stamp Act but are merely memoranda of sales of goods already completed. The term "conveyance" is defined in the Stamp Act as including a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by schedule I.

It is argued that the transaction of sale was completed by delivery of the goods and payment of the purchase money, quite apart from the entry in the account book signed by the seller, and that such entry did not transfer any property as the transfer had already been completed. It is argued therefore that these entries are merely memoranda of completed sales and it is urged that as memoranda of the sale of goods they are exempted from liability to stamp duty under article 5, exemption (a). Article 5 provides a stamp duty upon an agreement or memorandum of an agreement but exempts from liability an agreement or memorandum of agreement for or relating to the sale of goods or merchandise exclusively. In the present case we think that the documents in question are memoranda of completed sales and that they do relate to the sale of goods exclusively. An agreement would include a completed agreement or contract of sale and we think that the applicant's contention is well founded. He is supported by the authority of a ruling of the Madras High Court in *Kyd v. Mahomed* (1). This was a case of an agreement in which it was recited by the parties that one party had purchased certain goods from the other party at a specified price. The agreement also mentioned certain collateral or subsidiary incidents relating to the sale of the goods, but it was held that the document primarily evidenced merely a transaction of sale and that the intention of the legislature was to exempt *bona fide* sales and purchases of merchandise from stamp duty. In the present case it is clear that the documents merely recite the terms of the contract of sale,

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describing the articles sold and the price given. In so far therefore as the documents are merely memoranda of the sale of goods, they are exempt from stamp duty.

A further point has also to be considered. Two of the documents, viz. Exhibits C and D recite not merely the articles which have been sold and the price for which they have been sold, but contain a clear acknowledgment that the price has been received by the seller. They are therefore receipts as well as memoranda of the sale of goods. In our opinion, being receipts, they should have been stamped as receipts with stamp duty of one anna each.

It has been argued that the duty of stamping the receipt is laid upon the person executing the receipt, that is, upon the seller and not upon the person who accepts the receipt, that is, the accused who was the purchaser. This is true, but on the facts of the present case we think it is clear that the accused instigated or conspired with the sellers to execute unstamped receipts for his benefit. It was not merely a case of having an unstamped receipt sent to him and raising no objection. The accused, according to his own admission, got the sellers to make these entries in the account books and to sign them. He used the word "likhwai". On these facts we think that the court below was right in holding that the accused abetted the execution of unstamped documents, and we hold that they should have been stamped as receipts. These receipts were executed entirely for his own benefit and protection. It has been further urged on the applicant's behalf that there was no intention of defrauding Government as he did not know that the documents required to be stamped. This point has been found in his favour by the court below and we accept the finding that the accused did not know that the documents required to be stamped. Section 62(b) however does not require any criminal intention or intention of defrauding Government and the ignorance of law on the part of the accused does not render him immune from

conviction under section 62(b), although it can undoubtedly be taken into account in passing sentence. In the circumstances of this case we think that as the stamp duty on two of the documents which form the subjects of the charges amounted to only two annas, only light fines will be necessary.

We hold therefore that the documents Exhibits C and D are receipts and that the conviction of the accused under section 62(b) of the Stamp Act read with section 109 of the Indian Penal Code in respect of these two documents must be upheld. We consider that a sentence of Rs.5 fine in respect of each of these two documents will be sufficient.

MISCELLANEOUS CIVIL

Before Justice Sir Lal Gopal Mukerji and Mr. Justice Young

COMMISSIONER OF INCOME-TAX (APPLICANT) *v.* OFFICIAL LIQUIDATORS, AGRA SPINNING AND WEAVING MILLS Co. (OPPOSITE PARTY).*

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Income-tax Act (XI of 1922), sections 2(6), 2(12), 3, 22(1) and 41—Company in liquidation—Business carried on by official liquidators for beneficial winding up—Liquidators liable to furnish income-tax return in respect of such business—“Manager”—Right of the Crown to recover dues—Companies Act (VII of 1913), sections 2(9), 171—Interpretation of statutes.

Where, in course of liquidation of a company, the business of the company is carried on by the official liquidators for the beneficial winding up, they can be called upon to furnish a return of income, for purposes of income-tax, in accordance with section 22(1) of the Income-tax Act.

A company, once formed and registered, continues to be a company until it is dissolved under section 194 of the Companies Act. *Prima facie*, therefore, a company in liquidation is included in the definition of a company in section 2(6) of the Income-tax Act, and is therefore liable to income-tax under section 3 of that Act. Under section 22(1) of that Act the “principal officer” of the company is liable to furnish a return of the income; the definition of “principal officer” in section 2(12) of the Act includes a manager, and the official liquidators,

*Application in Miscellaneous Case No. 404 of 1931.