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branch at Cawnpore, representing in British India the company at Indore, and the non-resident firm of Nandlal Bhandari and Sons, the resident branch at Cawnpore must be deemed to be the agents of the non-resident firm within the meaning of section 43, and the profits accruing in British India to the non-resident firm will be chargeable in the name of their fictional agents in British India.

For the reasons given above our answer to the question referred to us is in the affirmative. Let a copy of this judgment be sent to the Commissioner of Income-tax under the seal of the Court.

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*May*, 9

*Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai*

LODHI (PLAINTIFF) *v.* ZIAUL HAQ (DEFENDANT)*

*Stamp Act (II of* 1899), *section* 36—*Document "admitted in evidence"—Attention not called or directed to question of sufficiency of stamp—Subsequent objection on ground of insufficiency of stamp—Document cannot then be rejected.*

When a court "admits a document in evidence" it does, or at least is deemed to, act judicially and this judicial act of admitting the document in evidence can at no subsequent stage of the suit be set at naught on the ground that the document was not duly stamped. In other words, if no objection to the admissibility of a document on the ground of insufficiency of stamp is raised before the document is admitted in evidence, such objection cannot subsequently be raised.

The provisions of section 36 of the Stamp Act are mandatory and preclude the question of the admissibility of a document on the ground of insufficiency of stamp from being raised after the document has once been "admitted in evidence". There is no warrant for introducing the words, "after judicially considering the question of sufficiency of stamp", after the words "admitted in evidence" in the section.

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

Mr. *M. A. Aziz,* for the opposite party.

IQBAL AHMAD and BAJPAI, JJ.:—This is a reference by the Small Cause Court Judge of Saharanpur under section 113 read with order XLVI, rule 1 of the Civil

*Miscellaneous Case No. 618 of 1938.

Procedure Code and the question that has been referred for decision is as follows:

"Whether the expression 'admitted in evidence' in section 36 of the Stamp Act means that the court should have admitted the document after having consciously applied its mind to the question of sufficiency of stamp or whether it includes a case in which the question of sufficiency of stamp has escaped the notice of the court and the attention of the parties."

The facts that led to the reference may shortly be stated as follows. In a suit for recovery of arrears of rent of a house or shop the plaintiff relied on a written acknowledgment made by the defendant in order to sail clear of the bar of limitation. This acknowledgment was unstamped. The case was heard first by Mr. Pran Nath Aga, Judge, small course court, who examined the plaintiff and during the course of the plaintiff's examination the following entry was made on the document containing the acknowledgment: Exhibit 1. Admitted against defendant.

(Sd.) Pran Nath Aga,
*Judge, Small Cause Court,*
24-2-'38."

Till this stage of the suit no objection was raised by the defendant to the admissibility of the document on the ground that the document required stamp and was unstamped. The case was then heard by the successor in office of Mr. Pran Nath Aga, who also recorded some evidence. Finally the case was heard by Mr. Brij Mohan Lal, Judge, small cause court, who has made the present reference. For the first time before the last mentioned officer the defendant objected to the admissibility of the document on the ground that the same was unstamped. It was then contended on behalf of the plaintiff that in view of the provisions of section 36 of the Stamp Act (II of 1899) the objection raised by the defendant could not be entertained. It was however urged on behalf of the defendant that as Mr. Aga had not "judicially considered" the question

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raised by the defendant section 36 had no application to the case, and in support of this contention reliance was placed on certain judicial decisions which will be noticed hereafter. The learned Judge entertained doubt as to the correctness of those decisions, and as there was no reported case of this Court on the point he made the present reference.

Section 36 of the Stamp Act provides that "Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

Section 61 has no bearing on the question referred to this Court and may, therefore, be left out of account.

The provisions as regards the admission of documents in evidence are contained in order XIII of the Civil Procedure Code. By rule 1 of that order the court is enjoined to receive all documents of every description produced by the parties at the first hearing of the suit. Rule 2 empowers the court to receive documents produced subsequent to the first hearing, provided good cause is shown to the satisfaction of the court for the non-production of the document on the date of the first hearing. Rule 3 authorises the court to reject irrelevant or inadmissible documents produced by the parties and then rule 4 prescribes the endorsements that are to be made on a document admitted in evidence. In the case before us the document in question was, as stated before, admitted in evidence by Mr. Aga and the endorsements prescribed by rule 4 were made on the document. There can, therefore, be no question that the document was admitted in evidence by Mr. Aga. But when Mr. Aga admitted the document in evidence his attention was not called to the fact that the document required stamp and as it was unstamped it was inadmissible in evidence. It is under these circumstances that the question arises whether it was open to the court at a belated stage of the trial to ignore the

order admitting the document in evidence and to reject the same.

In *Chunilal Tulsiram* v. *Mulabai* (1) it was held that the phrase "admitted in evidence", in section 36 of the Stamp Act, means "the act of letting the document in as part of the evidence; but it must be letting in as a result of judicial determination of the question whether it can be admitted in evidence or not for want of stamp. In cases, however, where the question of stamp has escaped the notice of the court and the attention of the parties, and a document is allowed by the court to go in, the admission is a judicial determination of the question, because the court let in the document on its view that there was nothing against its admission."

These observations apply to the case before us, as when Mr. Aga admitted the document in evidence no question about its inadmissibility on the ground of being unstamped was raised by the parties.

The question was considered by the Nagpur Judicial Commissioner's court in *Sitaram* v. *Thakurdas* (2) and it was held that unless the court admits a document, not properly stamped, after applying its mind consciously to the question whether the document was admissible or not the document cannot be deemed to have been "admitted in evidence" within the meaning of section 36 of the Stamp Act. To the same effect is the decision of the Madras High Court in *Venkanna* v. *Parasuram Byas* (3) and of the Lahore High Court in *Jagan Nath* v. Mt. *Chauli* (4).

On the other hand in *Dasi Chamar* v. *Ram Autar Singh* (5) it was held by the Patna High Court that when a document is admitted in evidence and exhibited the court cannot, in view of the provisions of section 36 of the Stamp Act, thereafter remove the document from the record of evidence on its attention being call-

(1) (1910) 6 Indian Cases, 903. (2) (1918) 50 Indian Cases, 781.
(3) (1929) 120 Indian Cases 879. (4) A.I.R. 1933 Lah. 271.
(5) (1923) 71 Indian Cases, 475.

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ed to the fact that the document was not properly stamped; and the same view was taken by the Calcutta High Court in *Nirode Basini Mitra* v. *Sital Chandra Ghatak* (1).

The provisions of section 36 of the Stamp Act are mandatory and absolute and preclude the admission of a document, once admitted in evidence, from being called in question at any stage of the suit on the ground that the document was not duly stamped. There is nothing in the section to warrant the conclusion that the section has application only to cases in which the court has admitted the document after "consciously" applying its mind to the question of admissibility. As pointed out by RANKIN, C. J., in *Nirode Basini Mitra's* case, "under section 36 it matters nothing whether it (document) was wrongly admitted or rightly admitted or admitted without objection or after hearing or without hearing such objection." To accede to the view taken in *Sitaram* v. *Thakurdas* (2), *Venkanna* v. *Parasuram Byas* (3) and *Jagan Nath* v. *Mt. Chauli* (4) would be to introduce in section 36 the words, "after judicially considering the question of sufficieny of stamp", after the words "admitted in evidence", and for this there is no warrant. When a court admits a document in evidence it does, or at least is deemed to, act judicially and this judicial act of admitting the document in evidence can at no subsequent stage of the suit be set at naught on the ground that the document was not duly stamped. In other words, if no objection to the admissibility of a document on the ground of insufficiency of stamp is raised before the document is admitted in evidence, such objection cannot subsequently be raised. This is our answer to the reference.

Before parting with this reference we may observe that the view taken by us does not in any way prejudice the right of the revenue authorities to realise the proper

(1) A.I.R. 1930 Cal. 577. (2) (1918) 50 Indian Cases, 781.
(3) (1929) 120 Indian Cases, 879. (4) A.I.R. 1933 Lah. 271.

stamp duty and penalty, as under section 61 of the Stamp Act power is given to the appellate courts to revise the decision of subordinate courts regarding the sufficiency of stamps.

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## REVISIONAL CRIMINAL

*Before Mr. Justice Ismail*

G. A. ST. GEORGE *v.* UMA DUTT SHARMA*

1939 *May*, 8

*Criminal Procedure Code, sections 29A, 446(1)—European British subject—Magistrate second class not competent to try or to commit such accused for trial—Commitment quashed—Re-trial—Discretion of court—Criminal Procedure Code, section 181(2)—Jurisdiction—Place of trial—Criminal misappropriation—Criminal Procedure Code, section 202—Issue of warrant for accused—Discretion of court.*

A Magistrate of the second class is not competent to inquire into or to try or to commit to a court of session for trial the case of an accused who is an European British subject and claims to be tried as such.

The "Magistrate" in section 446(1) of the Criminal Procedure Code means a Magistrate having jurisdiction to inquire into the case; section 446 must be read with section 29A of the Code. As a Magistrate of the second class is precluded by section 29A from inquiry into or trying a case against an European British subject he can not be in a position to discharge the accused under section 209 or section 253, as contemplated within section 446, nor to judge whether there is a *prima facie* case on the evidence against the accused in the absence of which it is not permissible to a Magistrate to commit an accused for trial. In these circumstances it is incumbent upon the Magistrate of the second class to direct the complainant to make a complaint to a Magistrate competent to hold a preliminary inquiry before commitment for trial.

Where the complainant had posted at Muzaffarnagar postal orders for a certain amount, as entry fee for a crossword competition, to the "Illustrated Weekly of India", Bombay, and the accused was one of the directors of a company which edited that paper and was apparently the editor in charge of the competition, and the complainant alleged that the money was misappropriated by the accused, it was *held* that the misappropriation, if any, took place in Bombay and not at Muzaffarnagar, even on

*Criminal Reference No. 157 of 1939.