collaterals of the fourth degree were found to be not entitled to succeed to non-ancestral property as against the daughter.

1935

DASAUNDHI KHAN v. MST. RADIAN BIBI.

It is significant that the plaintiffs have not been able to prove a single instance to the contrary supported by any documentary evidence whatever. They have no right to succeed to non-ancestral property and their suit for possession of this land was rightly dismissed.

TEK CHAND J.

I would accordingly uphold the judgment and decree of the learned Senior Subordinate Judge and dismiss the appeal with costs.

SKEMP J.—I agree.

SKEMP J.

A. N. C.

Appeal dismissed.

SPECIAL BENCH.

Before Addison, Coldstream and Abdul Rashid JJ.

SHAMS DIN AND OTHERS—Petitioners

versus

THE COLLECTOR, AMRITSAR, AND ANOTHER—Respondents.

1936

Jan. 31.

Civil Reference No. 59 of 1935.

Indian Stamp Act, II of 1899, sections 2 (12) and 29 — Deed containing a sale and a bond — signed by petition-writer, witnesses, and vendees, besides the vendor and maker — whether all are executants of the deed and liable to penalty in respect of deficiency in stamp duty.

A debtor firm made a deed in favour of its fourteen creditor firms, by which it sold to the latter certain property for a lac of rupees in part liquidation of its debts to them and promised to pay the balance, Rs.59,107, within four years. The deed was signed by the debtor firm and the fourteen creditor firms (as vendees) and also by the petition-writer and a number of persons as witnesses. Admittedly it should have

1936

SHAMS DIN
v.
THE COLLECTOR, AMRITSAR.

been stamped with a stamp of the value of the aggregate amount with which a conveyance and a bond would be chargeable, but it was stamped as if it had been a simple conveyance. The following questions were referred to the High Court by the Financial Commissioners, (1) whether the deed is to be deemed to have been executed by the fourteen firms, and (2) whether the document is to be deemed to have been executed also by the petition-writer and the witnesses.

Held, that in respect of the bond, the vendees, the petition-writer and the witnesses could not be said to have drawn, made or executed the instrument (*vide* section 29 of the Indian Stamp Act) and therefore both the questions must be answered in the negative.

The intention of clause (12) to section 2 of the Act, explained.

Bhawanji Harbhum v. *Devji Punja* (1).

In re The Application of Chet Po (2), and *Maung Po Din* v. *Maung Po Nyein* (3), referred to.

Secretary of State v. *Basharat Ullah* (4), distinguished.

Case referred under section 57 of the Indian Stamp Act, by Mr. A. Latifi, Financial Commissioner, Revenue, Punjab, with his U.-O. No.1853-M (a), dated 2nd August, 1935, for orders of the High Court.

M. L. PURI and MEHR CHAND SUD, for Petitioners.

EDMUNDS, Assistant Legal Remembrancer, for Collector, Respondent.

COLDSTREAM J.

COLDSTREAM J.—This is a reference made to this Court under section 57 of the Indian Stamp Act by the Financial Commissioner, Revenue, the Chief Controlling Revenue Authority of the Punjab. The circumstances of the case are as follows :—

A merchant firm in Amritsar doing business as Mohammad Sharif-Abdur Rahman incurred heavy

(1) (1895) I. L. R. 19 Bom. 635.
(2) (1914) 22 I. C. 75.
(3) (1922) 66 I. C. 360.
(4) (1908) I. L. R. 30 All. 271.

debts in its dealings with fourteen other firms referred to hereafter as the creditor firms. On the 30th April, 1928, Mohammad Sharif, proprietor of the debtor firm, executed a registered deed reciting that the firm had sold a certain property to the creditors for a sum of one lakh of rupees in liquidation of part of its debts, leaving a debt outstanding of Rs.55,807-15-0 which amount together with a sum of Rs.3,000 to cover the cost of the deed, altogether Rs.59,107-15-0 the firm promised to pay within a period of four years. The deed bore a stamp of the value of Rs.3,000 which was the amount of the duty payable on a deed of sale of property worth a lakh of rupees.

The deed was signed by the petition-writer below whose signature it was signed by Mohammad Sharif. Below Mohammad Sharif's signature were added the signatures of a number of witnesses and below these the signatures of the fourteen creditor firms. Over the signature of each witness is the word *Gawah Shud* (witnessed) and under the signature of each of the creditor firms are the words " vendee No.1," " vendee No.2 " and so on.

The period of four years having expired, one of the creditor firms, Dost Mohammad-Mohammad Aslam, sued Mohammad Sharif-Abdur Rahman to recover the unpaid amount of the debt, putting forward the deed of 30th April, 1928, in proof of their claim. Mohammad Sharif raised the objection that the deed was not admissible in evidence as it had not been properly stamped, the argument being that the deed related to two distinct matters, namely, a sale by Mohammad Sharif and a bond executed by him in favour of the creditors, and that under the provisions of section 5 of the Indian Stamp Act the instrument

1936

SHAMS DIN
v.
THE
COLLECTOR,
AMRITSAR.

COLDSTREAM J.

ought to have been stamped with stamps of the value of the aggregate amount with which a conveyance and a bond would have been chargeable.

The Subordinate Judge who was trying the suit accepted this contention, impounded the document under section 38 (2) of the Stamp Act and forwarded it to the Collector. The Collector decided that in respect of the matter of the bond the deed was chargeable with a duty of Rs.446-4-0 and he passed an order under secton 40 (1) (*b*) of the Act requiring the payment of this sum, together with a penalty of ten times this amount, that is to say Rs.4,908-12-0, by the persons drawing, making or executing the deed. As this sum was not paid and the deed remained insufficiently stamped the Subordinate Judge refused to admit the deed in evidence.

After examining the document the Assistant Collector, whose duty it was to recover the sum required to be paid by the Collector's order, directed recovery to be made from the fourteen creditor firms. Objections were raised before the Collector who ordered that the recovery should be made from the fourteen firms and the firm Mohammad Sharif-Abdur Rahman jointly and severally. Against this order revision applications were presented to the Commissioner, Lahore Division, one by the creditor firm who contended that the penalty was recoverable from Mohammad Sharif and the other by Mohammad Sharif who claimed that the plaintiff firm Dost Mohammad-Mohammad Aslam was alone liable to pay the amount on the ground that the Subordinate Judge had ordered that firm, the plaintiff in the suit, to pay it.

The Commissioner forwarded the petitions to the Financial Commissioner for decision under section 56 of the Act and the Financial Commissioner has

made the present reference to this Court. The questions stated for our decision are (1) whether the deed is to be deemed to have been executed by the fourteen creditor firms, and (2) whether the document is to be deemed to have been executed also by the petition-writer and the witnesses. In his referring order the Financial Commissioner has expressed his opinion that the answer to the first question should be ' Yes ' and to the second ' No.'

We have heard Mr. M. L. Puri for the creditor firms, and the Assistant Legal Remembrancer, who, on behalf of the Crown argues that all who signed the deed—Mohammad Sharif, the creditor firms, the petition-writer, and the witnesses—are liable to make good the sum of Rs.4,908-12-0. Mohammad Sharif has not been represented before us.

The Collector based his decision that all the fifteen firms were liable for the amount required to be recovered upon clause 12 of section 2 of the Stamp Act, which lays down that " executed " and " execution " used with reference to instruments mean " signed " and " signature." His view was that as all the firms had signed as parties to the instrument they had all executed the bond and were liable under the provisions of section 29 (*a*) (article 15).

It is not disputed that the deed is one to which the provisions of section 5 of the Act are applicable, and that it was chargeable with the duty payable on a bond for Rs.55,807-15-0 as well as with the duty payable on a sale deed of property at a price of a lakh of rupees. Mr. Puri's contention is that the meaning of clause 12 of section 2 has been misunderstood and misapplied, its intention being to declare not that any one signing a document executes it, but that for

1936

SHAMS DIN
v.
THE
COLLECTOR,
AMRITSAR.

[OLDSTREAM J.

the purpose of the Stamp Act a document shall be deemed to be executed when it is signed by the persons executing, making or drawing it. He argues that, so far as it is a bond, the deed in question was clearly not drawn, made or executed by the creditor firms, but by Mohammad Sharif who, under the provisions of section 29 of the Act must bear the expense of providing the proper stamp. In reply the learned Assistant Legal Remembrancer contends, first that the Collector's order is correct, clause 12 of section 2 being conclusive against Mr. Puri, as it clearly declares that the signing of an instrument shall be deemed to be the execution of it, and secondly that the creditor firms were parties to the agreement by Mohammad Sharif-Abdul Rahman to pay Rs.59,107-15-0, an implied condition of which was that they would forbear to sue for recovery of their debt for four years and that, therefore, they as well as Mohammad Sharif made and executed the instrument both as parties to the bond and as vendees.

Clause 12 of section 2 of the Act was enacted in 1899. Before that there was no such provision in the Act and the intention of the new clause was to make it clear at what time a document became executed so as to be chargeable with stamp duty under section 3 of the Act. Signature alone will not, in all cases, complete the execution of a document for the purpose of giving it legal validity, for instance, a will may not be legally executed until it is duly attested by witnesses, a *Hundi* is not executed until it is delivered [see *Bhawanji Harbhum* v. *Devji Punja* (1)], but for the purpose of the Stamp Act the clause makes all documents which are chargeable with duty when

(1) (1895) I. L. R. 19 Bom. 635.

executed, chargeable as soon as they are signed by the executant. Thus it has been held by a Full Bench of the Burma Chief Court in *In re The Application of Chet Po* (1), that an instrument chargeable with stamp duty on being executed is not liable to duty until it is signed, although this fact does not necessarily imply that the unsigned document is incomplete for the purpose for which it was drawn up. Again in *Maung Po Din* v. *Maung Po Nyein* (2), it was observed that unsigned Burmese instruments made since the Indian Stamp Act of 1899 came into force cannot be treated as executed for the purpose of the Stamp Law. Clause 12 does not define who is deemed to be the executant nor is its intention to lay it down that every person who appends his signature to an instrument 'draws, makes or executes' it. In order to decide who is liable for payment of the duty we have to look to section 29. The only question therefore is 'did the vendees and the witnesses draw, make or execute the deed in this case so far as it amounts to a bond'? So far as it embodies a contract of sale the creditor firms, the vendees, properly signed it, and but for the contract to the contrary expressed in the deed they would have been liable to pay the stamp duty chargeable on a conveyance of property for a lakh of rupees. By the instrument they bound themselves to purchase certain property for a certain price. That they signed as vendees is clear from the description below their signatures (vendee No.1, vendee No.2 and so on). But it cannot be said that they drew, made or executed any bond to pay Rs.59,107-15-0, for a person cannot by his own instrument bind another person to pay him money

(1) (1914) 22 I. C. 75. (2) (1922) 66 I. C. 360.

1936

SHAMS DIN v. THE COLLECTOR, AMRITSAR.

GOLDSTREAM J.

This disposes of the first of the arguments advanced by the Assistant Legal Remembrancer. His second argument is rebutted by the deed itself. There are no words in it which can be read as recording any undertaking by the vendees. They promise nothing but merely recite the fact of the sale of property for a stated price. Assuming, however, that the deed implies a promise of forbearance to sue until the expiry of four years, this would be an agreement, and not a part of the bond, and as such would be chargeable with a duty of one rupee. In this case the instrument would have to be regarded as one embodying not two but three matters—a conveyance, an agreement and a bond. The Assistant Legal Remembrancer has referred us in the course of his argument to *Secretary of State* v. *Basharat Ullah* (1) where it was remarked that the party wishing a document to be admitted in evidence was the person from whom the Collector in the first instance can recover the duty and the penalty required before the documents can be admitted in evidence. But the question of the propriety of the Collector's order generally is not before us, and we have to answer merely the question referred to us by the Financial Commissioner, namely, by whom the document is to be deemed to have been executed. In support of his contention that even the witnesses in this case must be deemed to have executed the instrument as a whole, Mr. Edmunds has drawn our attention to section 62 of the Stamp Act which makes punishable—(*a*) the drawing, making, issuing, or endorsing or transferring, or signing otherwise than as a witness, of any bill of exchange or promissory note without the same being duly stamped, and (*b*) the

(1) (1908) I. L. R. 30 All. 271.

executing or signing otherwise than as a witness of any other instrument chargeable with duty without the same being duly stamped. From the words of this section he asks us to infer that a document may be executed by a witness. But the words do not justify any such inference. The section does not make criminal the execution of an improperly stamped instrument by a witness, but the signing of it by persons other than witnesses. The words ' signing otherwise than as a witness ' must be read together. A witness to an instrument does not draw, make or execute it. Lastly Mr. Edmunds asks us to notice that two of the vendees were present when the instrument was registered and signed by Mohammad Sharif. These were parties to the sale and signed, as already mentioned, in that capacity. They are described in the Sub-Registrar's endorsement as present and known to him. Only Mohammad Sharif is recorded as having admitted the execution.

1936

SHAMS DIN
v.
THE COLLECTOR, AMRITSAR.

COLDSTREAM J.

For the reasons indicated above I would answer both questions referred to us in the negative.

ADDISON J.—I agree

ADDISON J.

ABDUL RASHID J.—I agree.

ABDUL RASHID J.

P. S.

Reference answered in the negative.