APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

1938
November 1

THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY, SIND AND BALUCHISTAN, REFEROR *v.* MESSRS. ABUBAKER ABDUL REHMAN AND OTHERS, MUTAVALEES OF THE WAKF CREATED BY MR. ABUBAKER ABDUL REHMAN, ASSESSEES.*

Indian Income-tax Act (XI of 1922), s. 9—Owner—Wakf properties—Liability to tax—Mutavalees—Beneficiaries—Beneficiaries liable to tax.

By a deed of Wakf a Mahomedan appointed himself, his wife, his son and another person as Mutavalees of certain immoveable properties belonging to him, "to have and to hold" them "upon trust" for the several purposes declared therein.

Under cls. (*a*), (*b*) and (*c*) of the deed the Mutavalees were directed to collect the rents of the said properties and after defraying all charges in connection therewith, to set apart one-fourth of the balance for the purposes of a reserve fund and distribute the remaining amount during the lifetime of the settlor amongst his wife and his children, in such manner as the settlor "in his absolute discretion" may direct. This deed was subsequently amended by another deed rescinding cls. (*b*) and (*c*) of the prior deed and directing that the income of the Wakf properties, after defraying the charges mentioned in cl. (*a*) should be divided amongst his wife and children, one-eighth going to his wife and the remainder to his children.

For the year 1937–38 the Income-tax Officer called upon the Mutavalees (assessees) to furnish a return of income under s. 22 (2) of the Indian Income-tax Act, 1922. The return was duly submitted and the assessment order made. A question having arisen as to whether the Mutavalees or the beneficiaries were liable to pay the tax:—

Held, that on the true construction of s. 9 of the Income Tax Act it was the beneficiaries who should be assessed, as they and not the Mutavalees were the owners of the annual letting value of the property.

Trustees of Sir Currimbhoy v. *Commissioner of Income-tax, Bombay*,[1] referred to.

CIVIL REFERENCE made by Khan Bahadur J. B. Vachha, Commissioner of Income-tax, Bombay Presidency, Sind and Baluchistan.

Income-tax on Wakf properties.

One Abubaker Abul Rehman owned certain immoveable properties in Bombay and on July 18, 1931, he executed a deed of Wakf under which he appointed himself, his wife, Bai Rabiabai, and his son, Ebrahim, and one

*Civil Reference No. 9 of 1938.

[1] (1934) 58 Bom. 317, L. R. 61 I. A. 209, P. C.

Mr. Nurmahomed Begmahomed as Mutavalees of certain immoveable properties. The material terms of the deed were as follows :—

"(*a*) The Mutavalees shall recover the income of the Wakf properties and the investments thereof and shall pay thereout in the first place all charges for repairs, insurance and other outgoings and expenses relating to the Wakf properties.

(*b*) The Mutavalees shall out of the balance of the said income after payment of all the said charges and expenses set apart a fourth share thereof and invest the same in Government Securities authorised by law for the investment of Trust Funds and hold the said fourth share of the said net income and the investments representing the same as a Reserve Fund and shall utilise and appropriate the said Reserve Fund and the investments thereof for effecting heavy repairs and rebuilding extending or improving the Wakf properties and where such Reserve Fund shall be accumulated to such a sum as the Mutavalees consider sufficient to purchase or construct a new property and the said amount is not then or in the near future required for heavy repairs or for rebuilding extending or improving the Wakf properties the Mutavalees shall purchase or construct a new property and thenceforth such newly purchased property shall form part of the General Wakf Properties and shall not be treated as part of investment of the Reserve Fund.

(*c*) The Mutavalees shall during the life-time of the Settlor utilise and appropriate the balance of the net income remaining after providing for the said charges and Reserve Fund as hereinbefore mentioned in cls. (*a*) and (*b*) in such manner and towards such payments to the said Bai Rabiabai and Ebrahim Abubaker, Hoosein Abubaker, Alimahomed Abubaker and Hawabai Abubaker and their issues and to any one or more of them to the exclusion of the other or others of them as the Settlor shall in his absolute discretion direct and shall accumulate the balance by depositing the same and the resulting income thereof in the firm of Abubaker Abdul Rehman & Co., or any other firm or investment and on such terms as the Settlor shall from time to time think proper and direct with power to the Mutavalees to apply the said accumulations and deposits of any preceding year or years in or towards payments to the said Rabiabai, Ebrahim Abubaker, Hoosein Abubaker, Alimahomed Abubaker and Hawabai or their issues or any of them as the Settlor may direct in the same manner as if such accumulation might have been applied had they been the balance of income arising from the original Wakf properties during the then current year, PROVIDED ALWAYS and it is agreed and declared that if any amount of the accumulations of the said income shall remain, unexpended or unpaid at the date of the death of the Settlor the same shall be treated as forming part of the corpus of the Wakf properties and the Mutavalees shall invest the same in authorised securities and hold the same as part of Wakf properties.

(*d*) The Mutavalees shall from and after the death of the Settlor and during the life-time of his wife Bai Rabiabai utilise and appropriate the balance of the income of the Wakf properties remaining after providing for the charges and Reserve Fund as hereinbefore mentioned in cls. (*a*) and (*b*) in the manner following that is to say they shall pay one-eighth of such balance of the income to the said Bai Rabiabai wife of the

1938

COMMISSIONER OF INCOME-TAX, BOMBAY v. ABUBAKER

Settlor for her life and pay the remaining seven/eighth thereof to Ebrahim Abubaker, Hoosein Abubaker, Alimahomed Abubaker and Hawabai Abubaker and the issue of such child or children of the Settlor who may have died in the life-time of the Settlor or who may die in the life-time of the said Bai Rabiabai according to their respective shares prescribed by Mahomedan Law in case of succession and inheritance as if the Settlor or the person through whom they derive title had died intestate leaving the Wakf Properties and Wakf Funds or part thereof as forming part of his or her estate."

On October 29, 1934, the Settlor executed another deed amending the previous one as follows :—

"(1) That cls. (*b*) and (*c*) of the said Principal Indenture of the 18th day of July 1931 shall be considered as deleted and expunged as if the same had not been mentioned in the said Principal Indenture.

(2) That in the first line of cl. (*d*) the words 'and after the death of the Settlor and' shall be deleted and in lieu thereof the words 'the date of these presents' shall be substituted and the words 'and Reserve Fund' in the fourth line of the said cl. (*d*) and the words 'and (*b*)' in the fifth line of the said cl. (*d*) of the Principal Indenture shall be deleted and expunged so that cl. (*d*) shall read as follows : (*d*) The Mutavalees shall from the date of these presents during the life-time of his wife Bai Rabiabai utilise and appropriate the balance of the income of the Wakf properties remaining after providing for the charges as hereinbefore mentioned in cl. (*a*) in the manner following that is to say they shall pay one-eighth of such balance of the income to the said Bai Rabiabai wife of the Settlor for her life and pay the remaining seven-eighth thereof to Ebrahim Abubaker, Hoosein Aboobaker, Alimahomed Abubaker and Hawabai Abubaker and the issue of such child or children of the Settlor who may have died in the life-time of the Settlor or who may die in the life-time of the said Bai Rabiabai according to their respective shares prescribed by Mahomedan Law in case of succession and inheritance as if the Settlor or the person through whom they derive title had died intestate leaving the Wakf properties and Wakf funds or part thereof as forming part of his or her estate.

(3) That the words 'and Reserve Fund' in the third line and fourth line of cl. (*c*) of the principal Indenture and the words 'and (*b*)' in the fourth line of the said principal Indenture shall be deleted and expunged.

(4) That save and except as expressly varied as above stated the said principal Indenture and Declaration of Wakf dated the 18th day of July 1931 shall remain in full force and effect and shall be read and construed as if the variations hereby made appeared therein at the outset and nothing herein contained shall be deemed to prejudice or affect the conveyance and assignment and Wakf of the properties comprised therein upon and for the trusts of the wife and children and remoter issue of the Settlor from generation to generation and ultimately to the use of the charitable religious or pious purposes as mentioned in the said principal Indenture or any of the covenants conditions provisoes agreements or powers therein contained save only so far as such conditions are expressly affected or varied as hereinbefore stated IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first above written."

For the financial year 1937–38, the assessees submitted a statement of total income showing the same to be Rs. 64,027.

The Income-tax Officer assessed the income under s. 23 (*3*) on Rs. 63,308. His order was, on appeal, confirmed.

On March 3, 1938, the assessees applied to the Commissioner of Income-tax praying that certain questions of law should be referred to the High Court. Accordingly, the learned Commissioner made a reference setting out the following questions for the consideration of their Lordships, viz. :—

"(1) Whether in the circumstances of the case the Mutavalees (assessees) constitute an association of individuals within the meaning of s. 3 of the Indian Incometax Act, 1922.

(2) Whether the Mutavalees (assessees) can be said to be the owners of the properties within the meaning of s. 9 of the Indian Income-tax Act, 1922, and were rightly assessed as such.

(3) Whether the assessees were in any event rightly assessed as owners of the Wakf properties under s. 9 of the said Act.

(4) Whether according to law the Income-tax Authorities were not bound to assess as regards the income of the Wakf immoveable properties directly the five beneficiaries mentioned in the Deed of Wakf dated the 18th day of July 1931 and Supplemental Indenture dated the 29th day of October 1934."

In making the reference the learned Commissioner gave his reasons as follows :—

"As s. 66 (2) of the Act requires that I should give my opinion while submitting this statement of the case, I respectively submit that the answer to questions (1) to (3) should be in the affirmative and to question (4) in the negative, following the decisions of your Lordships in the following cases :—

(1) Messrs. Laxmidas Devidas and Vasanji Ruttonsey (Civil Reference No. 17 of 1936) reported in 39 Bom. L. R. 910.

(2) Messrs. Kheraj Obheya and others (Civil Reference No. 15 of 1936).

(3) Messrs. Kantisen Mohanji Ganjawalla and Brothers (Civil Reference No. 1 of 1937).

(4) Messrs. Dwarkanath Harischandra Pitale and Chandrakant Harischandra Pitale (Civil Reference No. 5 of 1937).

The income under assessment is admittedly liable to tax under the head 'Property' in s. 6 of the Act and hence, has to be computed as laid down

1938

COMMISSIONER OF INCOME-TAX, BOMBAY v. ABUBAKER

in s. 9 thereof, which states that 'The tax shall be payable by an assessee under the head 'Property' in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto *of which he is the owner*, other than such portions of such property as he may occupy for the purposes of his business, subject to the allowances' mentioned therein. Hence the person to be assessed is the owner of the property concerned and the quantum of the assessment is the annual value thereof from which certain allowances are to be deducted. As stated in the supplementary deed dated 29th October 1934 (Exhibit B), under the Declaration of Wakf (Exhibit A), the properties in question have been all 'granted, conveyed, assigned and transferred unto the Mutavalees' (i.e., the assessees) and it cannot be disputed that they are the legal owners thereof. Hence they are the only persons who are liable to be assessed as owners under s. 9 (*1*) of the Act in respect of the annual value of the properties. All of them have, by agreeing to act as Mutavalees or trustees under the said Declaration of Wakf and by acting as such, associated themselves for the common purpose of managing the said properties and acquiring the income thereof. They thus clearly form an association of individuals within the meaning of s. 3 of the Act and are liable to be taxed as such. The observations of your Lordships in the case of Messrs. Kantisen Mohanji Ganjawalla and Brothers (Civil Reference No. 1 of 1937) in regard to the property referred to in the last paragraph of the judgment in that case are clearly applicable to the present case. Therein your Lordships observe as follows :—

'In the case of the other property involved the assessees did not purchase this, but it was also conveyed to them by the trustees of a settlement under which they were the beneficiaries. It seems to me to be irrelevant to consider how the property vested in the association of individuals became vested in them. The question is how they have it and are using it. If they are using it for the purpose of producing income, I think the property is vested in them as an association of individuals, and they are properly assessable under s. 9.' It is in the present case admitted that the property has been vested in the assessees and that 'they are using it for the purpose of producing income'. Hence 'they are properly assessable under s. 9'. Again in the case of Messrs. Dwarkanath Harischandra Pitale and Chandrakant Harishchandra Pitale (Civil Reference No. 5 of 1937), your Lordships decided that as soon as the assessees 'elected to retain the property as a joint venture producing income, they became an association of individuals within the meaning of the Income-tax Act, and that they are properly assessed as the owners of the property under s. 9'. Applying the same reasoning, as soon as the assessees in the present case agreed to work as Mutavalees and associated themselves in order to get the properties transferred, assigned and conveyed to them and began to manage them, collect the rents thereof and disburse all charges in connection therewith, they became an association of individuals liable to tax under s. 9 as the legal owners of the properties concerned. That the association does not itself as such enjoy the income is irrelevant. Section 9 does not require that this should be so and it is open to any owner of property not to enjoy it but to give it for enjoyment to his wife or children or any one else. The associations of individuals in the above cases which this Honourable Court has decided did not enjoy the income but divided it amongst the individual

members thereof. In the present case, the income is enjoyed by two of the Mutavalees and others. It is further submitted that it would be not permissible under the Act to assess the beneficiaries to tax on their shares in the income as none of them is the owner in any sense of the word of any of the Wakf properties. Hence it is respectfully submitted that the answers to the questions should be as indicated above.

A copy of your Lordships' decision may kindly be certified to me for further action as required by s. 66 (5) of the Act."

The reference was heard.

M. C. Setalvad, Advocate General, with *H. F. Mulla*, Solicitor to the Central Government at Bombay, for the referor.

Sir Jamshedji Kanga, with *Amarchand and Mangaldas*, for the assessees.

BEAUMONT C. J. This is a reference made by the Commissioner of Income-tax under s. 66, sub-s. (2), of the Indian Income-tax Act, and the question raised, like a good many other questions under this Act, is not free from difficulty. Shortly, the question is whether income-tax should be assessed on the mutavalees of a wakf, or whether the tax should be assessed on the beneficiaries under the wakf deed. The deed of wakf is dated July 18, 1931, and by it certain immoveable properties were conveyed to trustees upon certain trusts, which, as amended by a later deed, are, stated shortly, to pay all charges for repairs, insurance and other outgoings out of the income and then to pay one-eighth of the balance of the income to the settlor's wife for life and the other seven-eighths to the settlor's children. The one-eighth after the death of the wife is to follow the other seven-eighths, and putting it quite generally and so far only as is material for the purpose of the present reference, the trust is to pay the income to the children and remoter issue of the settlor so long as any such issue exists, and after the extinction of all the children and remoter issue of the settlor, the property is to be held for the use of charitable, religious or pious purposes of a permanent character recognized by the Mussalman law for the benefit of Sunni Halai Memon Mahomedans. These trusts are, I think, good under the Mussalman Wakf Validating Act of 1913.

1938

COMMISSIONER OF INCOME-TAX, BOMBAY v. ABUBAKER

Beaumont C. J.

An argument was addressed to us that in any case the trustees are not liable to be assessed to tax because of s. 4, sub-s. (3) (*i*), of the Indian Income-tax Act, which exempts income derived from property held under trust or other legal obligation wholly for religious or charitable purposes. In my opinion, this property, although validly given as wakf under the Wakf Validating Act, is not held for religious or charitable trusts. Prior to the date of that Act it had been held by the Privy Council that trusts of this nature for the benefit of the settlor's family and afterwards for charity were void, and in my opinion, the Wakf Act did not in any way alter the law as declared by the Privy Council. It only validated trusts which otherwise would have been held void. That view is in accordance with a decision of the full bench of the Lahore High Court in *Umar Bakhsh* v. *Commissioner of Income-tax, Punjab.*[1]

The main question which arises is whether under this Wakf the trustees or the beneficiaries ought to be assessed. Up to a recent date, the Commissioner of Income-tax had assessed the beneficiaries on the income which they received under the wakf deed, as appears from his order of June 20, 1935, which is an accompaniment to exhibit "E". But recently he has altered that practice in accordance with what he considers to be the law as laid down by this Court in *Commissioner of Income-tax* v. *Laxmidas Devidas*[2] and *Commissioner of Income-tax, Bombay*, v. *Dwarkanath Pitale*,[3] and in two unreported cases to which the learned Commissioner refers. Those cases, in my opinion, do not govern the present question, because in none of those cases was the Court dealing with trustees. In all those cases immoveable property had become vested in two or more persons who were using it for the purpose of producing income for their own benefit, and the Court held that they were properly asesssable as an association of individuals

[1] (1931) 12 Lah. 725, F. B.

[2] [1937] Bom. 830.

[3] (1938) 40 Bom. L. R. 455.

under s. 3 in respect of the property, and were not assessable separately in respect of their respective interests in the property. But in none of those cases, as I have said, was there any question as between a trustee and beneficiary. The trustees in this case are no doubt an association of individuals, but that consideration does not determine the question whether they or their beneficiaries should be assessed to income-tax. There are grave practical difficulties in assessing trustees where, as in India, the tax is imposed on a sliding scale. Such an assessment may result in beneficiaries being charged at a higher rate than is appropriate to them because they have a wealthy trustee, and in a trustee being charged at a higher rate than is appropriate to him because he holds large trust income. The question whether trustees or the persons beneficially entitled to the income of property should be assessed to income-tax came before this Court in *Commissioner of Income-tax, Bombay* v. *Trustees of Sir Currimbhoy Ebrahim*[1] and subsequently before the Privy Council in *Trustees of Sir Currimbhoy* v. *Commissioner of Income-tax, Bombay*.[2] I think that both this Court and the Privy Council adopted the view which Lord Cave had expressed in a case under the English Act, viz., *Williams* v. *Singer: Pool* v. *Royal Exchange Assurance*,[3] that *prima facie* it is the owner of the income who has to be assessed, and that where property is vested in a trustee in trust for a beneficiary, *prima facie* it is the beneficiary who is to be assessed, though there may be cases, and *Sir Currimbhoy Ebrahim's* case[1] was one of them, in which the assessment is properly made upon the trustee, there being nothing in the Indian Income-tax Act which precludes assessment on a trustee.

Now, in this case the learned Advocate General has argued that in assessing income derived from immoveable property under the Indian Income-tax Act, it is the owner of the

[1] (1931) 33 Bom. L. R. 1549.
[2] (1934) 58 Bom. 317, s. c. L.R. 61 I. A. 209, P. C.
[3] [1921] 1. A. C. 65.

1938

COMMISSIONER OF INCOME-TAX, BOMBAY v. ABUBAKER

Beaumont C. J.

property, who must be assessed under s. 9. He admits that the owner need not be the legal owner, and that when property is vested in a trustee in trust for a beneficiary simply, the beneficiary may be the owner. But this consideration cannot apply to trusts which create interests in succession, since a reversioner cannot be assessed upon income to which he is not entitled. Moreover in the trust which falls for consideration in this case, and in most trusts under Indian law, the ultimate beneficiaries are not ascertainable, and there is no existing beneficial owner of the corpus of the property. So that if the argument of the learned Advocate General is accepted, it must follow that in most cases of trusts it is the trustee who will be assessable on income of immoveable property. This seems to me inconsistent with the general scheme of the Act, which undoubtedly recognizes trusts (See ss. 38 and 40). A difficulty does, however, arise on the language of s. 9 of the Act. Before dealing with that section, it is necessary to look at some of the earlier sections. Section 3 is the charging section which charges tax in respect of all income, profits and gains of the previous year. Section 4 applies the Act to all income, profits or gains as described in s. 6. Section 6 enacts that the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely, (i) salaries, (ii) interest on securities, (iii) property, (iv) business, (v) professional earnings, and (vi) other sources. Section 7 deals with the method of assessing salaries, and s. 8 deals with assessing interest on securities. Then comes s. 9 which deals with the income of property. Sub-section (*1*) is in these terms :—

"The tax shall be payable by an assessee under the head 'Property' in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances."

Then follow various allowances in respect of outgoings for repairs, insurance premiums and so forth which may

1938

COMMISSIONER OF INCOME-TAX, BOMBAY v. ABUBAKER

Beaumont C. J.

be deducted. The effect of s. 9 seems to be that the assessable income of immoveable property is the annual value of such property, as defined in sub-s. (*2*), less the authorized allowances, and without taking into account any part of the property which the assessee may occupy for the purposes of his business. No doubt the language of sub-s. (*1*) does seem to involve that the assessee must be the owner of the property from which the income is derived, but, in my opinion, in order to bring the section into conformity with the general scheme of the Act, it is necessary to read the words " of which he is the owner " as meaning " of which annual value he is the owner ". I think that the Privy Council really adopted this view of the section in *Sir Currimbhoy Ebrahim's* case[1] (*supra*), because their Lordships discussed the question whether the Baronet was the owner within the meaning of s. 9 in some detail. They held that he was not the owner, because he was only entitled to the balance of income which remained after providing for a Sinking Fund and Repair Fund, and then simply as so much money. But if " owner " in s. 9 means owner of the property from which the income is derived, there was no question to discuss, since the Baronet was at the most a tenant for life. As far as I know, the construction which, I think, should be placed on s. 9 is the one which has been adopted in practice, and we have been referred to no authority in support of the Advocate General's argument that the income of immoveable property must be assessed on the owner of such property, and not on the owner of the income. I think, therefore, that the original view of the learned Commissioner was right, and that it is the beneficiaries who should be assessed, and not the mutavalees of the property.

The actual questions raised are :—

(1) Whether in the circumstances of the case the Mutavalees (assessees) constitute an association of

[1] (1934) 58 Bom. 317, s. c. L. R. 61 I. A. 209, P. C.

1938

COMMISSIONER OF INCOME-TAX, BOMBAY v. ABUBAKER

Beaumont C. J.

individuals within the meaning of s. 3 of the Indian Income-tax Act, 1922 ?

(2) Whether the Mutavalees (assessees) can be said to be the owners of the properties within the meaning of s. 9 of the Indian Income-tax Act, 1922, and were rightly assessed as such ?

(3) Whether the assessees were in any event rightly assessed as owners of the wakf properties under s. 9 of the said Act ?

(4) Whether according to law the Income-tax Authorities were not bound to assess as regards the income of the wakf immoveable properties directly the five beneficiaries mentioned in the deed of wakf dated July 18, 1931, and supplemental indenture dated October 29, 1934 ?

The answers to the questions will be as follows :—

(1) In the affirmative.

(2) In the negative.

(3) In the negative.

(4) The Income-tax Authorities were bound to assess the five beneficiaries.

Costs to be paid on the Original Side scale.

RANGNEKAR J. I agree. I confess the question raised on this reference is not free from doubt, but upon the whole I have come to the conclusion that the view which we have taken is in accordance with the scheme of the Act and the principles laid down in *Trustees of Sir Currimbhoy* v. *Commissioner of Income-tax, Bombay* case[1] and *Williams* v. *Singer : Pool* v. *Royal Exchange Assurance*.[2] True, that in taking that view we are departing from a strict grammatical construction of s. 9 of the Indian Income-tax Act, but I have no regrets in that respect, because after all it seems to me that the whole object of the Act is to tax the income of the subject where it is found. If the

[1] (1934) 58 Bom. 317, s. c. L. R. 61 I. A. 209, P. C.
[2] [1921] 1 A. C. 65.

1938

COMMISSIONER OF INCOME-TAX, BOMBAY v. ABUBAKER

income is found with the beneficiary, then the beneficiary is primarily liable to be taxed, and if the income is found with the trustee, then it is the trustee who is liable.

I agree, therefore, that the questions should be answered in the way proposed by my Lord the Chief Justice.

Rangnekar J.

Answers accordingly.

Y. V. D.

ORIGINAL CIVIL.

Before Mr. Justice B. J. Wadia.

1938
November 7

THE PERFORMING RIGHT SOCIETY LTD., PLAINTIFFS *v.* THE INDIAN MORNING POST RESTAURANT (A FIRM), DEFENDANT.*

Power-of-attorney—Proof of—Authentication by a Notary Public—Presumption under s. 85, Evidence Act (I of 1872)—Civil Procedure Code (Act V of 1908), O. III, r. 2—Attorney of High Court with general power-of-attorney, whether a recognised Agent—Verification of plaint by constituted attorney—Whether proper verification.

When a power-of-attorney executed before and authenticated by a Notary Public is produced, it is open to the Court under s. 85 of the Indian Evidence Act to presume that all the necessary requirements for the proper execution of the power-of-attorney have been duly fulfilled.

A certificate annexed to the power-of-attorney by the Notary Public is proof of the facts therein certified.

An attorney of the High Court holding a general or a special power-of-attorney is a recognised agent of the party under O. III, r. 2 (*a*), and can act for him.

Order XXIX, r. 1, is an enabling rule and it does not exclude the operation of O. VI, rr. 14 and 15; accordingly a plaint duly signed and verified by a constituted attorney of the party is properly signed and verified.

SUIT for injunction and damages for infringement of copyright.

The plaintiffs were the owners of the copyright in a musical composition called Classica which copyright was still subsisting. As such owners they had granted a licence

*O. C. J. Suit No. 781 of 1937.